MONTANA LEGISLATIVE HISTORY

Chapter 303 1995

Bill H _____ S 211 Original bill & history x C

Senate Committee on FISH & GAME

Hearing Date(s)	1/24	x C
	1/26	x C
Exec. Action	2/2	x C
		C
Date Out		C

House Committee on JUDICIARY

Hearing Date(s)	3/3	x C
Exec Action	3/9	x C
		C
		C

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

Senate Judiciary

2/9 x

Exec. Action 2/14 x

	RETURNED TO SENATE WITH AMENDMENTS		
3/18	2ND READING AMENDMENTS CONCURRED	46	0
3/20	3RD READING AMENDMENTS CONCURRED	50	0
3/25	SIGNED BY PRESIDENT		
3/25	SIGNED BY SPEAKER		
3/27	TRANSMITTED TO GOVERNOR		
3/31	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 309		
	EFFECTIVE DATE: 10/01/95		

SB 208 INTRODUCED BY MESAROS, ET AL.

GENERALLY REVISE LAWS RELATING TO CONFINEMENT COSTS FOR INMATES, INCLUDING COSTS OF MEDICAL CARE

1/20	INTRODUCED		
1/20	FIRST READING		
1/20	REFERRED TO LOCAL GOVERNMENT		
1/21	FISCAL NOTE REQUESTED		
1/26	FISCAL NOTE RECEIVED		
1/26	FISCAL NOTE PRINTED		
2/02	HEARING		
2/08	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/10	2ND READING PASSED	49	0
2/11	3RD READING PASSED	49	0
	TRANSMITTED TO HOUSE		
2/11	FIRST READING		
2/15	REFERRED TO LOCAL GOVERNMENT		
3/07	HEARING		
3/24	COMMITTEE REPORT—BILL CONCURRED		
3/25	2ND READING CONCURRED	96	2
3/27	3RD READING CONCURRED	95	1
	RETURNED TO SENATE		
4/06	SIGNED BY PRESIDENT		
4/06	SIGNED BY SPEAKER		
4/07	TRANSMITTED TO GOVERNOR		
4/12	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 388		
	EFFECTIVE DATE: 04/12/95		

SB 209 INTRODUCED BY SWYSGOOD, ET AL.

REFORM THE PUBLIC ASSISTANCE SYSTEM

BY REQUEST OF THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

1/20	INTRODUCED		
1/20	FIRST READING		
1/20	REFERRED TO PUBLIC HEALTH, WELFARE & SAFETY		
2/03	HEARING		
2/07	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/09	FISCAL NOTE REQUESTED		
2/09	FISCAL NOTE RECEIVED		
2/09	FISCAL NOTE PRINTED		
2/09	2ND READING PASSED AS AMENDED	49	0
2/10	3RD READING PASSED	49	0
	TRANSMITTED TO HOUSE		
2/13	FIRST READING		
2/15	REFERRED TO HUMAN SERVICES & AGING		
3/08	HEARING		
3/16	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/27	2ND READING CONCURRED AS AMENDED	94	5

3/29	3RD READING CONCURRED	92	6
	RETURNED TO SENATE WITH AMENDMENTS		
4/04	2ND READING AMENDMENTS CONCURRED	49	0
4/05	3RD READING AMENDMENTS CONCURRED	50	0
4/08	SIGNED BY PRESIDENT		
4/10	SIGNED BY SPEAKER		
4/10	TRANSMITTED TO GOVERNOR		
4/15	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 491		
	EFFECTIVE DATE: 10/01/95		

SB 210 INTRODUCED BY BISHOP, ET AL.

GENERALLY REVISE AND CLARIFY THE LAW REGARDING VIOLATIONS OF FISH AND GAME CRIMINAL STATUTES AND RESIDENCY REQUIREMENTS

BY REQUEST OF THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS

1/20	INTRODUCED		
1/20	FIRST READING		
1/20	REFERRED TO FISH & GAME		
1/21	FISCAL NOTE REQUESTED		
1/27	FISCAL NOTE RECEIVED		
1/27	FISCAL NOTE PRINTED		
1/31	HEARING		
2/08	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/09	2ND READING PASSED	37	12
2/10	3RD READING PASSED	37	13
	TRANSMITTED TO HOUSE		
2/13	FIRST READING		
2/15	REFERRED TO FISH & GAME		
2/28	HEARING		
3/16	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/24	2ND READING CONCURRED AS AMENDED	53	45
3/27	3RD READING CONCURRED	59	37
	RETURNED TO SENATE WITH AMENDMENTS		
3/30	REVISED FISCAL NOTE RECEIVED		
3/30	REVISED FISCAL NOTE PRINTED		
4/01	2ND READING AMENDMENTS CONCURRED	46	0
4/03	3RD READING AMENDMENTS CONCURRED	43	2
4/08	SIGNED BY PRESIDENT		
4/08	SIGNED BY SPEAKER		
4/10	TRANSMITTED TO GOVERNOR		
4/13	SIGNED BY GOVERNOR		
4/13	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 417		
	EFFECTIVE DATE: 07/01/95		

SB 211 INTRODUCED BY KEATING, ET AL.

REVISE LAWS RELATING TO A PROPERTY OWNER'S LIABILITY TOWARD PERSONS WHO MAKE RECREATIONAL USE OF THE PROPERTY

1/20	INTRODUCED		
1/20	FIRST READING		
1/20	REFERRED TO FISH & GAME		
1/24	HEARING		
1/26	HEARING		
2/03	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/04	REREFERRED TO JUDICIARY		
2/09	HEARING		
2/14	COMMITTEE REPORT—BILL PASSED AS AMENDED		

2/15	2ND READING PASSED	48	2
2/16	3RD READING PASSED	47	3
	TRANSMITTED TO HOUSE		
2/20	FIRST READING		
2/20	REFERRED TO JUDICIARY		
3/03	HEARING		
3/10	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/11	2ND READING CONCURRED	95	1
3/14	3RD READING CONCURRED	97	3
	RETURNED TO SENATE WITH AMENDMENTS		
3/18	2ND READING AMENDMENTS CONCURRED	46	0
3/20	3RD READING AMENDMENTS CONCURRED	48	2
3/25	SIGNED BY PRESIDENT		
3/25	SIGNED BY SPEAKER		
3/27	TRANSMITTED TO GOVERNOR		
3/30	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 303		
	EFFECTIVE DATE: 10/01/95		

SB 212 INTRODUCED BY BISHOP, ET AL.

PROVIDE PROCEDURAL SAFEGUARDS FOR JOINT AND SEVERAL LIABILITY DETERMINATIONS

1/20	INTRODUCED		
1/20	FIRST READING		
1/20	REFERRED TO JUDICIARY		
2/14	HEARING		
2/16	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/18	2ND READING PASSED	37	13
2/20	3RD READING PASSED	38	12
	TRANSMITTED TO HOUSE		
2/20	FIRST READING		
2/20	REFERRED TO JUDICIARY		
3/03	HEARING		
3/15	COMMITTEE REPORT—BILL CONCURRED		
3/28	2ND READING CONCURRED	89	11
3/29	3RD READING CONCURRED	90	10
	RETURNED TO SENATE		
3/30	SIGNED BY PRESIDENT		
3/31	SIGNED BY SPEAKER		
4/03	TRANSMITTED TO GOVERNOR		
4/05	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 330		
	EFFECTIVE DATE: 04/05/95		

SB 213 INTRODUCED BY WILSON, ET AL.

INCREASE INCOME LIMITATIONS APPLICABLE TO A PROPERTY TAX EXEMPTION FOR A DISABLED VETERAN OR SURVIVING SPOUSE

1/20	INTRODUCED
1/20	FIRST READING
1/20	REFERRED TO TAXATION
1/21	FISCAL NOTE REQUESTED
1/24	FISCAL NOTE RECEIVED
1/26	FISCAL NOTE PRINTED
2/09	HEARING
2/28	TABLED IN COMMITTEE
3/29	MISSED TRANSMITTAL DEADLINE FOR 71ST DAY
	DIED IN COMMITTEE

SB 214 INTRODUCED BY WILSON, ET AL.

MAKE PERMANENT ALLOCATION OF A PERCENTAGE OF THE BOAT FEE IN LIEU OF TAX USED FOR IMPROVING REGIONAL BOATING FACILITIES

1/20	INTRODUCED
1/20	FIRST READING
1/20	REFERRED TO LOCAL GOVERNMENT
1/21	FISCAL NOTE REQUESTED
1/26	FISCAL NOTE RECEIVED
1/27	FISCAL NOTE PRINTED
2/02	HEARING
2/09	TABLED IN COMMITTEE
2/23	MISSED TRANSMITTAL DEADLINE FOR 45TH DAY
	DIED IN COMMITTEE

SB 215 INTRODUCED BY TVEIT, ET AL.

TRANSFER GENERAL ADMINISTRATION AND REGULATION OF GAME FARMS FROM DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO DEPARTMENT OF LIVESTOCK

1/21	INTRODUCED
1/21	FIRST READING
1/21	REFERRED TO AGRICULTURE, LIVESTOCK & IRRIGATION
1/23	FISCAL NOTE REQUESTED
1/28	FISCAL NOTE RECEIVED
1/30	FISCAL NOTE PRINTED
2/01	HEARING
2/07	HEARING
2/08	HEARING
2/10	TABLED IN COMMITTEE
2/23	MISSED TRANSMITTAL DEADLINE FOR 45TH DAY
	DIED IN COMMITTEE

SB 216 INTRODUCED BY BECK, ET AL.

ESTABLISH CONTINUING EDUCATION REQUIREMENTS FOR CREDIT LIFE AND DISABILITY INSURANCE PRODUCERS

1/21	INTRODUCED		
1/21	FIRST READING		
1/21	REFERRED TO BUSINESS & INDUSTRY		
2/03	HEARING		
2/08	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/09	2ND READING PASSED	49	0
2/10	3RD READING PASSED	49	0
	TRANSMITTED TO HOUSE		
2/13	FIRST READING		
2/15	REFERRED TO BUSINESS & LABOR		
3/03	HEARING		
3/03	COMMITTEE REPORT—BILL CONCURRED		
3/04	2ND READING CONCURRED	91	7
3/06	3RD READING CONCURRED	93	6
	RETURNED TO SENATE		
3/07	SIGNED BY PRESIDENT		
3/07	SIGNED BY SPEAKER		
3/08	TRANSMITTED TO GOVERNOR		
3/09	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 98		
	EFFECTIVE DATE: 10/01/95		

SENATE BILL NO. 211

INTRODUCED BY Keating, Mills, Stovall, Sprague, Harding, Cohenour, GP

A BILL FOR AN ACT ENTITLED: "AN ACT LIMITING A PROPERTY OWNER'S LIABILITY TOWARD PERSONS WHO MAKE RECREATIONAL USE OF THE PROPERTY; REPEALING THE PRESENT LAW ON RECREATIONAL USE IMMUNITY; AMENDING SECTIONS 15-6-133, 23-2-907, AND 77-1-805, MCA; AND REPEALING SECTIONS 70-16-301 AND 70-16-302, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Purpose.** The purpose of [sections 1 through 4] is to encourage owners of public and private property to make the property available to the public for recreational purposes by limiting the owner's liability toward persons entering upon the property and toward persons who may be injured or otherwise damaged by the acts or omissions of persons who enter upon the property.

NEW SECTION. **Section 2. Definitions.** As used in [sections 1 through 4], the following definitions apply:

(1) (a) "Charge" means the amount of money asked in return for an invitation to enter or go upon property.

(b) The term does not include general property taxes or special assessments levied for the improvement or maintenance of the property or rental paid by a group, organization, or corporation or by the state or federal government.

(2) "Owner" means a person or entity of any nature, whether private, governmental, or quasi-governmental. The term includes tenants, lessees, occupants, grantees of conservation easements, water users' associations, irrigation districts, drainage districts, and persons or entities in control of the property.

(3) "Property" means land, roads, water, watercourses, and private ways. The term includes any improvements, buildings, structures, machinery, and equipment on property.

(4) "Recreational purposes" means any activity that serves to refresh a person's mind or body by amusement, stimulation, or exercise. The term includes but is not limited to any one or any combination

of the following:

(a) play;

(b) sporting activities;

(c) hunting;

(d) fishing;

(e) swimming;

(f) boating;

(g) waterskiing;

(h) camping;

(i) picnicking;

(j) pleasure driving;

(k) winter sports;

(l) hiking;

(m) spelunking;

(n) bicycling;

(o) nature study;

(p) visiting, viewing, or enjoying historical, archaeological, scenic, or scientific sites; or

(q) other activities commonly known or understood to be recreational purposes.

NEW SECTION. **Section 3. Limitation on landowner liability -- duty of care.** (1) An owner of property who directly or indirectly invites or permits any person to use the property for recreational purposes, without charge, does not:

(a) extend any assurance that the property is safe for any purpose;

(b) confer upon the invitee or permittee the legal status of a person to whom a duty of care is owed; or

(c) assume responsibility for or incur liability for any injury to person or property caused by an act or omission of the invitee or permittee.

(2) The provisions of [sections 1 through 4] apply whether a person enters property for recreational purposes by invitation, permit, license, trespass, or any other method.

(3) An owner of property owes no duty of care to keep the property safe for entry or use by others

for recreational purposes or to give any warning of a dangerous condition, use, structure, or activity on the property to a person who enters the property for recreational purposes.

(4) Nothing in [sections 1 through 4] limits in any way the obligation of a person who enters or uses the property of another for recreational purposes to exercise due care in the use of the property.

NEW SECTION. **Section 4. Liability limitation exception.** [Sections 1 through 4] do not limit liability that otherwise exists for:

(1) willful or malicious failure to guard against or warn against a dangerous condition, use, structure, or activity; or

(2) injury suffered when an owner of property charges a person to enter the property for recreational purposes.

Section 5. Section 15-6-133, MCA, is amended to read:

"**15-6-133. Class three property -- description -- taxable percentage.** (1) Class three property includes:

(a) agricultural land as defined in 15-7-202;

(b) nonproductive patented mining claims outside the limits of an incorporated city or town held by an owner for the ultimate purpose of developing the mineral interests on the property. For the purposes of this subsection (1)(b), the following provisions apply:

(i) The claim may not include any property that is used for residential purposes, recreational purposes as ~~described~~ defined in ~~70-16-301~~ [section 2], or commercial purposes as defined in 15-1-101 or any property the surface of which is being used for other than mining purposes or has a separate and independent value for other purposes.

(ii) Improvements to the property that would not disqualify the parcel are taxed as otherwise provided in this title, including that portion of the land upon which the improvements are located and that is reasonably required for the use of the improvements.

(iii) Nonproductive patented mining claim property must be valued as if the land were devoted to agricultural grazing use.

(c) parcels of land of 20 acres or more but less than 160 acres under one ownership that are not eligible for valuation, assessment, and taxation as agricultural land under 15-7-202(1). The land may not

be devoted to a commercial or industrial purpose.

(2) Class three property is taxed at the taxable percentage rate applicable to class four property, as provided in 15-6-134(2)(a).

(3) The land described in subsection (1)(c) is valued at the productive capacity value of grazing land, at a production level set by the department, and the taxable value is computed by multiplying the value by seven times the taxable rate for agricultural land."

Section 6. Section 23-2-907, MCA, is amended to read:

"**23-2-907. Conditions of owner liability.** The liability of the owner of a cave or the owner's authorized agent, officer, employee, or designated representative acting within the scope of authority is restricted pursuant to ~~70-16-302~~ [sections 1 through 4]."

Section 7. Section 77-1-805, MCA, is amended to read:

"**77-1-805. Liability of state and lessee.** (1) The provisions of ~~70-16-302~~ [sections 1 through 4] that limit the liability of a landowner or ~~his~~ the landowner's tenant for the recreational use of property apply to the state and any lessee of state lands used for general recreational purposes.

(2) The lessee is not responsible for the suppression of or for damages resulting from a fire on ~~his~~ the leased land caused by a general recreational user, except that a lessee who observes a fire caused by a general recreational user shall make reasonable efforts to suppress the fire or report it to the proper firefighting authority."

NEW SECTION. **Section 8. Codification instruction.** [Sections 1 through 4] are intended to be codified as an integral part of Title 70, chapter 16, part 3, and the provisions of Title 70, chapter 16, part 3, apply to [sections 1 through 4].

NEW SECTION. **Section 9. Repealer.** Sections 70-16-301 and 70-16-302, MCA, are repealed.

-END-

MINUTES

MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON FISH & GAME

Call to Order: By **CHAIRMAN KEN MESAROS**, on January 24, 1995, at 1:00 p.m.

ROLL CALL

Members Present:
Sen. Kenneth "Ken" Mesaros, Chairman (R)
Sen. Al Bishop, Vice Chairman (R)
Sen. William S. Crismore (R)
Sen. John R. Hertel (R)
Sen. Ken Miller (R)
Sen. Mike Sprague (R)
Sen. Gary Forrester (D)
Sen. Judy H. Jacobson (D)
Sen. Terry Klampe (D)
Sen. Bob Pipinich (D)

Members Excused: Senator Bruce Crippen

Members Absent: None

Staff Present: Andrea Merrill, Legislative Council
Serena Andrew, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing: SB 211, Limiting a Property Owner's Liability toward Recreationists
Executive Action: None

{Tape: 1; Side: A; Approx. Counter: 65.

HEARING ON SB 211

Opening Statement by Sponsor:

SENATOR THOMAS KEATING, SD 35, BILLINGS, stated that the purpose of this bill is to encourage public and private landowners to open their property to recreational use by limiting the liability of landowners who do not charge for use of their property.

Proponents' Testimony:

Jim Tillotson, Billings City Attorney, said the concept of this bill is not new. Current Montana law, Sec. 70-16-301 and 302, MCA, which has been in existence since 1965, states that a public or private landowner who allows recreational use without charge does not owe that person any duty of care for an injury sustained through ordinary negligence. A landowner is liable, however, for injury or damage incurred through his willful or wanton failure to guard or warn against a dangerous condition, use, structure or activity; or an injury suffered when the landowner charges for recreational use of his property.

Mr. Tillotson continued, citing a Montana Supreme Court case from 1970 where Montana Power leased land near Mystic Lake from the federal government and allowed free public use of its tramway from the dam. A Mr. Tucker fell off the tramway and was severely injured, subsequently suing Montana Power. As a licensee of federal property, Montana Power used the existing statute as defense, claiming the statute applied to personal as well as real property, and was found to be without liability.

In 1982, there was a Federal District Court case (Fischer vs. the United States) resulting from a Missoula grade school group's free guided tour of the Lee Metcalf Wildlife Range. Some of the children played on a snowplow parked near the picnic area; the blade fell, killing a child whose parents sued the federal government. The court held the federal government was protected from liability because there was no proof of willful or wanton misconduct on the part of the government.

Based on the language of the existing statute which does not distinguish between public and private owners, local government felt comfortable with its liability responsibilities. However, in a Billings case where a girl fell from a tree and broke her arm in a city park and her parents sued the city, the city raised the existing recreational use statute. Judge Holmstrom held that the statute did not apply because the park was city-owned. His reasoning was that the purpose of the statute was to encourage property owners to open their lands to public use. Since publicly owned and maintained parks are by definition already open to the public for recreational use, it must be obvious that the statute was not intended to apply when the government was the landowner. The case went to jury trial and the jury decided there was neither liability nor negligence on the part of the city.

This case made it apparent that existing law should be clarified. SB 211, currently being heard by the committee, is based on Nebraska law in place since 1965. SB 211 does not change existing law.

Government needs limited immunity. The city of Billings owns or has conservation leases on heavily used rimrocks property which

is completely undeveloped. The city could have a problem resulting from its present policy of allowing public use of this property. Billings also owns undeveloped property along the Yellowstone River. The city could be liable for water-related injuries because there are no warning signs on its property. If this property were closed, an enforcement problem would result. Also, Billings is attempting to establish bikeways; one part of the system would be on ditch company right-of-way. The ditch company does not allow public access because of potential liability. If the ditch company could not be held liable, these rights-of-way probably could be used for bikeways.

He urged the committee's support of SB 211.

Alec Hansen, League of Cities, commented that the Billings City Attorney explained the need for this bill, and added the support of his organization as well as that of the **Montana Municipal Insurance Authority.**

John Shontz, Montana Association of Realtors, supported the bill.

Charles Brooke, representing the Yellowstone County Commissioners, supported the bill because its passage will open more public and private property for recreational use by limiting the owners' liability. **EXHIBIT 1**

Lorna Frank, Montana Farm Bureau Federation, said the 6,000 members of her organization support SB 211 because landowners should not be held liable when their property is open to public recreational use. **EXHIBIT 2**

Maureen Cleary-Schwinden, Women in Farm Economics, supported the bill and said it would open more northeastern Montana property to bird hunting.

Bob Stephens, Montana Grain Growers Association, supported the bill.

John Bloomquist, Montana Stockgrowers Association, commented that one of the points he wanted to make had to do with the Fish, Wildlife & Parks Block Management Program as well as HB 195 on hunter management and hunting access enhancement within the Block Management Program. The term "rental" on page 1, line 21 of SB 211 is an exclusion from the term "charge."

The Stockgrowers would like to see services or materials provided in exchange for access under the Block Management Program also excluded from the "charge" provisions of this bill. He suggested coordination with the provisions of HB 195.

Ken Hoovestal, Montana Snowmobilers Association, said this bill hopefully would allow more lands to be used by recreationists, but his group would like to know whether or not snowmobilers are included.

On line 18, page 1 under "Charge," he stated that trail grooming programs make agreements with private landowners and the Forest Service and some costs might be involved. Snowmobilers want to be sure these landowners are not automatically exempted from liability.

He suggested adding from the recreationist after "Charge means the amount of money asked" so that trail grooming costs do not constitute a "charge." He requested legal clarification of this point.

Referring to line 26, page 1, clubs reach agreements with landowners for groomed trails, a parking lot, etc. To clarify that, in paragraph 2 he suggested adding or with an agreement to use or occupy the property after "control of the property."

Opponents' Testimony:

Russell Hill, Montana Trial Lawyers Association, said his organization is opposed to this bill and does not favor the type of bill that insulates people from responsibility when they make mistakes. People should be responsible for their mistakes. The incredibly broad language in this bill destroys existing protection and will create problems. For example, the term "owner" applies to occupants as well as owners and users of the land. "Property" isn't just real property, it includes roads and machinery. "Charge" is very broad. "Recreation" is also too broad - it includes just enjoying the scenery.

Questions From Committee Members and Responses:

SENATOR BISHOP, SD #9, BILLINGS, asked **Mr. Tillotson,** "If a child playing in a Billings city playground were injured on a defective slide, and city employees knew the slide was defective, would this bill protect the city from liability?" **Mr. Tillotson** responded that if the city knew about the condition of the slide and did nothing to correct it, this bill would not exempt the city from liability; it would be wanton misconduct.

As another example, **SENATOR BISHOP** asked **Mr. Tillotson,** "If a private landowner had an abandoned well, would he have a duty to advise someone entering the property that the well was there, and what would happen if he didn't?" **Mr. Tillotson** replied that if the well were a blatant hazard, he thought it would fall within the "wanton" category. However, if it were a deep irrigation ditch which by its very nature is somewhat dangerous, unless there is willful misconduct on the part of the landowner, the landowner will not be responsible. This bill is designed so that landowners do not have to cure every problem on the land - "take it as you find it and I will let you go on it free."

SENATOR BISHOP commented that he wholeheartedly agreed with the concept of this bill, but was concerned about some of the liabilities, and asked **Mr. Hill's** opinion.

Mr. Hill, commenting on the language "willful" or "malicious," said gross negligence is neither willful nor malicious.

SENATOR BISHOP said he was asking about the case of the child who was injured on a slide in a city playground and found by a jury to be exempt from liability. **Mr. Hill** responded that he didn't think either case cited by **SENATOR BISHOP** would be either willful or malicious misconduct (page 3, line 8).

SENATOR BOB PIPINICH, SD #29, MISSOULA, commented that there are many old dumps containing machinery and appliances. If a child became trapped in a refrigerator or something of that sort, would this bill relieve the landowner of responsibility? **Mr. Tillotson** replied that there is a statute requiring people to properly secure refrigerators. This bill does not change existing statutes in that respect; its purpose is only to open land for recreation.

SENATOR PIPINICH asked John Bloomquist if he thought this bill would open up more land for hunting and fishing. **Mr. Bloomquist** said he thought it would, since landowners are concerned about liability. The Block Management or Hunting Enhancement Programs might be interpreted as not being gratuitous and not have the shield of the recreational statute. If those programs were included, he was sure it would have a benefit.

SENATOR TERRY KLAMPE, SD #31, FLORENCE, asked if a two-thirds vote on this bill would be required to hold the state immune and asked how it could be done for cities. **Mr. Hill** said he thought **SENATOR KLAMPE** was correct and he believed a two-thirds vote was necessary to shield the state.

SENATOR MIKE SPRAGUE, SD #6, BILLINGS, asked if the case of the child killed when the snowplow blade fell were considered negligence or gross negligence like leaving a motor running. **Mr. Tillotson** said Judge Smith found it was not willful or wanton misconduct and did not go beyond ordinary negligence.

SENATOR SPRAGUE asked how it would be interpreted if neighborhood children are invited to use a private pool during the day but returned after the property owner had gone and were injured while using the pool without permission. **Mr. Tillotson** responded that on page 2, line 28, the bill states the benefits apply when people enter by any means.

Mr. Hill, commenting on the snowplow blade, said it appeared to be negligence, but not willful or malicious. On the pool, he stated that he understood the bill was proposed to increase use of private property, but juries decide these cases and juries are not sympathetic to people bringing in nuisance lawsuits. He felt this bill would unfairly shield people who do things wrong.

SENATOR JOHN HERTEL, SD #47, MOORE, asked **SENATOR KEATING** if he were familiar with HB 195 and if it would fit together with SB

211. **SENATOR KEATING** responded that he hadn't read HB 195.

SENATOR HERTEL asked **Mr. Tillotson** if he thought the bill were too broad as far as landowners are concerned. **Mr. Tillotson** said he didn't think it was any broader than existing law that says "...a person makes recreational use of any property in the possession or under the control of...." It just says "property" and doesn't distinguish between real property or improvements to that property. In the 1970 Supreme Court case he discussed, the Supreme Court decided that property includes personal property.

CHAIRMAN KEN MESAROS, SD # 25, CASCADE, asked **Mr. Bloomquist** or **Mr. Lane** if the way liability is handled in HB 195 would fit with this bill and if coordination were necessary.

Bob Lane, Fish, Wildlife & Parks Chief Legal Counsel, responded that there is a section of HB 195 that would make the present recreational use law apply to Block Management so landowners will be protected. Some coordination will be necessary with HB 195.

CHAIRMAN MESAROS asked if HB 195 pertains only to hunting and fishing while SB 211 goes beyond that. **Mr. Lane** replied that HB 195 deals only with hunting enhancement or Block Management. Purpose of that section of the bill was to clarify the present law, get some money to landowners as part of the incentive, and ensure that the recreational use statute applies to them.

CHAIRMAN MESAROS asked **SENATOR KEATING** to explain why he was striking 70-16-301 on page 3, line 21 and on the following page, striking 70-16-302 on line 11. **SENATOR KEATING** responded those sections are current law that is being repealed. Concerning coordination, if SB 211 is passed it will replace current law, so HB 195 will merely amend this replacement law.

SENATOR BISHOP commented that **Andrea Merrill, Legislative Council staff,** found the section referred to by **SENATOR KLAMPE.** It says that a municipality has no immunity for injury to a person or property except as may be specifically provided by law through a two-thirds vote of each house of the Montana Legislature.

SENATOR BISHOP continued that "willful" and "malicious" are terms denoting a state of mind. "Malicious" means a wish to vex, annoy or injure another person or an intent to do a wrongful act. "Willful" when applied to the intent with which an act is done or omitted, denotes a purpose or willingness to commit the act or make the omission referred to.

SENATOR BISHOP said in conclusion that he liked the concept of this bill.

SENATOR SPRAGUE stated that the definitions just given by **SENATOR BISHOP** sounded like the act would be premeditated. **SENATOR BISHOP** responded that was true - the act would be committed with an intent to injure someone. This bill exempts everything just

short of that.

Closing by Sponsor:

SENATOR KEATING pointed out that his bill was intended to clarify existing law and create a friendly, cooperative atmosphere between landowners and recreational users.

On the case of the child being injured on a slide the city knew was defective, this bill states "willful failure to guard against." If city employees knew equipment was dangerous and didn't put a sign on it, he thought the judge would find in favor of the plaintiff. He cautioned the committee that the essence of this measure is for greater recreational use of public and private property for the good of the people. The arguments he heard on the bill were good.

ADJOURNMENT

Adjournment: The meeting adjourned at 2:00 p.m.

(Tape: This meeting was recorded on Side A of One 60-Minute tape.)

KEN MESAROS, Chairman

SERENA ANDREW, Secretary

KM/sa

MONTANA SENATE
1995 LEGISLATURE
FISH AND GAME COMMITTEE

ROLL CALL DATE 1/24/95

NAME	PRESENT	ABSENT	EXCUSED
BRUCE CRIPPEN			X
WILLIAM CRISMORE	X		
JOHN HERTEL	X		
KEN MILLER	X		
MIKE SPRAGUE	X		
GARY FORRESTER	X		
JUDY JACOBSON	X		
TERRY KLAMPE	X		
BOB PIPINICH	X		
AL BISHOP, VICE CHAIRMAN	X		
KEN MESAROS, CHAIRMAN	X		

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Company | Company

Location | Location | Dept. Charge

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To: Senate Fish & Game Committee Rm. 407 B

County of Yellowstone

COMMISSIONERS

(406) 256-2701

Box 35000
Billings, MT 59107

SENATE FISH AND GAME
EXHIBIT NO. 1
DATE 1/24/95
BILL NO. SB 211

January 24, 1995

Yellowstone County Delegate Members
Senate Fish and Game Committee

Senator Al Bishop, Vice Chair
Senator Bruce Crippen
Senator Ken Miller
Senator Mike Sprague
Senator Gary Forrester

VIA FACSIMILE

Dear Senators,

We apologize for not being at the hearing today, but because of scheduling conflicts we are unable to be in Helena.

We would like your support of SB 211, "an act limiting a property owner's liability toward persons who make recreational use of the property".

These changes in the present law will increase public and private property available for recreation in our County and limit the owners' liability. Yellowstone County and the City of Billings have been involved in an extensive program to provide a Bike Network and trails along the Yellowstone River. This bill will limit our openness to lawsuits and benefit our citizens with more recreational use of property in our County.

If we can be of further assistance, please feel free to call (406) 256-2701.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
YELLOWSTONE COUNTY, MONTANA

Mike Mathew
Mike Mathew, Chair

Absent
James A. Ziegler, Sr., member

Bill Kennedy
Bill Kennedy, member

MONTANA FARM BUREAU FEDERATION
502 South 19th • Bozeman, Montana 59715
Phone: (406) 587-3153

SENATE FISH AND GAME
EXHIBIT NO. 1
DATE 1/24/95
BILL NO. SB 211

January 24, 1995

Mr. Chairman, members of the committee, for the record, my name is Lorna Frank, representing over 6,000 Montana Farm Bureau members throughout the state.

Farm Bureau supports SB-211, landowners should not be held liable for accidents or injuries in cases where their property is open for public recreational use.

Instead of suing the individual property owner, people need to take the responsibility for their own actions. In most cases the property owner is not present and has no control over what an individual does and should not be held liable in case of an accident.

I urge this committee to give a do pass recommendation.

Lorna Frank

Lorna Frank, Lobbyist
Montana Farm Bureau

DATE 1/24/95

SENATE COMMITTEE ON Fish + Game

BILLS BEING HEARD TODAY: SB 211

< ■ > PLEASE PRINT < ■ >

Name	Representing	Bill No.	Check One: Support	Oppose
Willa Hall	Rails-to-Trails	HB 211		
Lorna Frank	Mt. Farm Bureau	SB 211	✓	
Charles R. Brooks	Yellowstone County	211	✓	
Bob Lamp	DFWP	502		
John Shontz	MT Assoc Realtors	211	X	
Jim Tillotson	City of Billings	211	X	
Bob Stephens	Mt. Grain Growers assn	211	X	
Gordon Morris	MACo	211	X	
Maureen Cleary-Schenkel	WIFE	211	X	
John Bloomquist	Mt. Stockgrowers	211	X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

MINUTES

MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON FISH & GAME

Call to Order: By **CHAIRMAN KEN MESAROS**, on January 26, 1995, at 1:00 p.m.

ROLL CALL

Members Present:
Sen. Kenneth "Ken" Mesaros, Chairman (R)
Sen. Al Bishop, Vice Chairman (R)
Sen. Bruce D. Crippen (R)
Sen. William S. Crismore (R)
Sen. Ken Miller (R)
Sen. Mike Sprague (R)
Sen. Gary Forrester (D)
Sen. Judy H. Jacobson (D)
Sen. Terry Klampe (D)
Sen. Bob Pipinich (D)

Members Excused: None

Members Absent: Senator John Hertel

Staff Present: Andrea Merrill, Legislative Council
Serena Andrew, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing: Continued Discussion of SB 211
Executive Action: None

{Tape: 1; Side: A; Approx. Counter: 36.}

CONTINUED HEARING ON SB 211

CHAIRMAN KEN MESAROS, SD #25, CASCADE, said this meeting was called to discuss issues raised at the last meeting. He asked **SENATOR BISHOP** or **ANDREA MERRILL** to review definitions of "willful or malicious" as used on page 3, section 4, subsection (1) of SB 211 and commented that he believed the bill was well intended, but the committee must be careful of the liability aspect.

ANDREA MERRILL, Legislative Council Staff, read a paragraph from Black's Law Dictionary: "Negligence - an omission to do something which a reasonable man, guided by ordinary considerations which ordinarily regulate human affairs, would do, or the doing of something which a reasonable and prudent man would not do."

"Willful - proceeding from a conscious motion of the will; voluntary. Intending the result which actually comes to pass; designed; intentional; not accidental or involuntary."

"Malicious - characterized by or involving malice; having or done with wicked or malicious intentions or motives."

Gross negligence would be a higher aspect of a higher standard; willful and malicious would be another level or aspect of action.

SENATOR TERRY KLAMPE, SD #31, FLORENCE, commented that the discussion seemed to be getting away from the subject and into definitions. Previous testimony mentioned that liability does not exist until it is proven. He asked what was said in current law.

RUSSELL HILL, Montana Trial Lawyers Association, replied that his organization felt the present law was preferable. It is necessary to go to court and convince a jury that an injury has occurred. There is a burden of proof on the defendant, even if he wins. He felt that when people were hurt and needed justice this law would be a very bad thing.

SENATOR WILLIAM CRISMORE, SD #41, LIBBY, asked if the exemption in SB 211 would apply in the case of a person who receives a landowner's permission to cross his private land to enter state lands where he pays a $5 recreational access fee.

ANDREA MERRILL responded that page 1, line 18 talks about "charge" of money and it is keyed to the person or state agency that does not charge. There probably would be another standard for the charge to use state lands.

SENATOR CRISMORE asked if it would cause a problem if he gave permission to cross his land to a state section. **Ms. Merrill** replied that it would not.

SENATOR MIKE SPRAGUE, SD #6, BILLINGS, said he signed SB 211 because he thought the law was limited to recreational use of property. If he let someone on his land he did not want that person to sue him. He did not like to see that simple principle distorted.

CHAIRMAN MESAROS commented that HB 195 also has some liability restrictions or conditions on the bottom of page 5 where it mentions 70-16-302(1).

ANDREA MERRILL, referring to the sections of law that would be repealed by SB 211, said those sections are the current law that has been in force since 1965 and deal with the Department of Fish, Wildlife & Parks' operating agreement with landowners, keyed to the property owner-recreationist relationship.

CHAIRMAN MESAROS stated that SB 211 repeals the sections that apply to Block Management.

MS. MERRILL said it appeared that the bill intends to cover Block Management participants. It would be necessary to coordinate with **Representative Swanson** to be sure that when 70-16-301 is repealed, SB 211 language is substituted in HB 195.

CHAIRMAN MESAROS commented that was the reason for the current committee meeting. Action will not be taken on the bill at this time, however.

MAUREEN CLEARY-SCHWINDEN, Women in Farm Economics, stated that she stood in support of this bill on January 24. Her group supports the overall concept of the bill, but wants the committee to know that there are some concerns regarding the broad language in the bill. The definition of "owner" that includes governmental or quasi-governmental entities - how will it affect people on the highway? She suggested some changes to the broad language of the bill to protect ordinary citizens and would like to see SB 211 coordinated with HB 195.

SENATOR SPRAGUE said he was sure **SENATOR KEATING** did not intend to create harm with this bill.

SENATOR BRUCE CRIPPEN, SD #10, BILLINGS, commented that the bill probably should have been assigned to Judiciary.

SENATOR GARY FORRESTER, SD #8, BILLINGS, asked if **SENATOR CRIPPEN** would be amenable to moving the bill to Judiciary.

SENATOR BISHOP remarked that he agreed with **SENATOR CRIPPEN**, but since the bill has been heard he thought it should be resolved by this committee. The concept of the bill should be retained.

SENATOR KEN MILLER, SD #11, LAUREL, said it appeared everyone had the same concerns and suggested one or two people work with legal counsel to come up with an amendment.

SENATOR KLAMPE said he thought SB 211 should be tabled until after HB 195 is heard.

SENATOR CRISMORE agreed with **SENATOR KLAMPE** because he thought it might not be necessary to have both bills.

SENATOR FORRESTER asked to hear from **Charles Brooks** because of the ditch company in Billings and the bikeway program.

CHARLES BROOKS, Yellowstone County, said this bill originated with the Yellowstone County Commissioners. They are concerned about liability because they are attempting to develop bikeways and trails along the Yellowstone River. They need the protection of this bill. Former County Attorney Harold Hanser worked on the bill and **Mr. Brooks** promised to communicate the committee's concerns to him. He urged the committee not to table the bill.

SENATOR MILLER commented that he didn't think the committee needed to worry about HB 195 because it addresses different issues.

ANDREA MERRILL said HB 195 is about the Block Management Program, but it certainly is of concern because the section being repealed refers to landowners.

SENATOR KLAMPE remarked that he thought the concern was being shifted to cities, and asked if Missoula should have immunity for its ditches because Billings wants immunity.

SENATOR SPRAGUE said he represented taxpayers and municipalities are made up of taxpayers. He thought it should be possible to take care of everyone.

CHAIRMAN MESAROS commented that the purpose of this meeting was to identify questions and research that might be needed on SB 211.

SENATOR CRIPPEN requested minutes of the meetings of January 24 and 26.

CHAIRMAN MESAROS said he had a set of amendments prepared by **ANDREA MERRILL (EXHIBIT 1). Ms. Merrill** commented that the amendments were suggested by Ken Hoovestal and the Department of Fish, Wildlife & Parks concurred. On line 18, the bill would say that "charge" means the amount of money "from a person engaged in a recreational activity."

The other change would be on the first page, Section 2, line 26 following "property" where "or with an agreement to use or occupy property." would be inserted.

With regard to the issue of a two-thirds vote, yes, it is required on this bill because the bill is relieving governmental liability to a degree. The two-thirds vote notation didn't appear because of an omission by the Legislative Council.

The bill should read on page 4, line 27, following line 26:

"NEW SECTION. **Section 10. Two-thirds vote required.** Because [sections 1 through 4] limit governmental liability, Article II, section 18, of the Montana constitution requires a vote of two-thirds of the members of each house of the legislature for passage."

SENATOR FORRESTER said he would like to wait until Harold Hanser and **SENATOR KEATING** are able to work on the bill.

CHAIRMAN MESAROS commented that he also would like to give them the opportunity to do that and would like to work with the Legislative Council staff on the bill.

SENATOR FORRESTER MOVED TO ALLOW THE SPONSOR AND DRAFTER (HAROLD HANSER) OF SB 211 TO MEET WITH A COMMITTEE ON TUESDAY, JANUARY 31.

ALL VOTED AYE EXCEPT SENATOR KLAMPE WHO VOTED NO. THE MOTION CARRIED.

CHAIRMAN MESAROS told the committee that 1995 is the 100th anniversary of the Fish, Wildlife & Parks Commission, and the department would like to commemorate the occasion. He asked the committee to keep the date of Thursday, March 9 open for that event.

ADJOURNMENT

Adjournment: The meeting adjourned at 1:40 p.m.

(Tape: This meeting is recorded on Side A of One 60-Minute tape.)

KEN MESAROS, Chairman

SERENA ANDREW, Secretary

KM/sa

MONTANA SENATE
1995 LEGISLATURE
FISH AND GAME COMMITTEE

ROLL CALL DATE 1/26/95

NAME	PRESENT	ABSENT	EXCUSED
BRUCE CRIPPEN	X		
WILLIAM CRISMORE	X		
JOHN HERTEL		X	
KEN MILLER	X		
MIKE SPRAGUE	X		
GARY FORRESTER	X		
JUDY JACOBSON	X		
TERRY KLAMPE	X		
BOB PIPINICH	X		
AL BISHOP, VICE CHAIRMAN	X		
KEN MESAROS, CHAIRMAN	X		

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SENATE FISH AND GAME
EXHIBIT NO. 1
DATE 1/17/95
BILL NO. SB 211

Amendments to Senate Bill No. 211
1st Reading Copy

Requested by Senate Fish and Game Committee

Prepared by Andrea Merrill
January 26, 1995

1. Page 1, line 18.
Following: "asked"
Insert: "from a person engaged in a recreational activity"

2. Page 1, line 26.
Following: "property"
Insert: "or with an agreement to use or occupy property"

3. Page 4, line 27.
Following: line 26
Insert: "NEW SECTION. **Section 10. Two-thirds vote required.** Because [sections 1 through 4] limit governmental liability, Article II, section 18, of the Montana constitution requires a vote of two-thirds of the members of each house of the legislature for passage."

NAME Richard & Pam Harwood

ADDRESS P.O. Box 62

HOME PHONE 432-2778 WORK PHONE 432-2890

REPRESENTING SELF

APPEARING ON WHICH PROPOSAL? SB 211

DO YOU: SUPPORT X OPPOSE _____ AMEND _____

COMMENTS:

The future development of recreation activity in the State rests in many respects on the limitations of spurious or malicious acts by recreationists against landowners. Such activities as water sports (scuba) off rafting can cross property lines. Cattle drives or similar activities must have ability to use appropriate routes crossing multiple ownerships

WITNESS STATEMENT

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 1/26/95

SENATE COMMITTEE ON Fish + Game

BILLS BEING HEARD TODAY: SB 211

< ■ > PLEASE PRINT < ■ >

Name	Representing	Bill No.	Check One: Support	Check One: Oppose
Greg Van Horssen	State Farm Ins. Co	SB 211	✓	
Richard L. Harwood	Self	SB 211	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

MINUTES

MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON FISH & GAME

Call to Order: By **VICE CHAIRMAN AL BISHOP**, on February 2, 1995, at 1:00 P.M.

ROLL CALL

Members Present:
Sen. Kenneth "Ken" Mesaros, Chairman (R)
Sen. Al Bishop, Vice Chairman (R)
Sen. Bruce D. Crippen (R)
Sen. William S. Crismore (R)
Sen. John R. Hertel (R)
Sen. Ken Miller (R)
Sen. Mike Sprague (R)
Sen. Gary Forrester (D)
Sen. Judy H. Jacobson (D)
Sen. Terry Klampe (D)
Sen. Bob Pipinich (D)

Members Excused: None

Members Absent: None

Staff Present: Andrea Merrill, Legislative Council
Serena Andrew, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing: SB 269
Executive Action: SB 211 and SB 269

(Tape: 1 ; Side: A; Approx. Counter: 64)

HEARING ON SB 269

Opening Statement by Sponsor:

SENATOR BRUCE CRIPPEN, SD #10, BILLINGS, told the committee this bill was requested by the Department of Fish, Wildlife & Parks (DFWP). It would allow Montana to become a member of the Interstate Wildlife Violator Compact. Wyoming is considering similar legislation. Current members of the compact are Colorado, Nevada, Oregon, Arizona, Idaho, Utah and Washington.

INFORMATION FROM RILEY JOHNSON

RILEY JOHNSON, Walleyes Unlimited of Montana, requested a resolution from the committee supporting a "native species" designation for walleye in Montana **EXHIBIT #3).**

SENATOR CRIPPEN asked **Mr. Johnson** if he had discussed this matter with the Department of Fish, Wildlife & Parks. **Mr. Johnson** replied that he had but the department appeared to have some concerns about the change in classification. Management dollars are currently going to native species and walleye fishermen would like some of that money spent on walleye.

SENATOR CRIPPEN commented that he didn't know the impact of these designations, and asked if anything dealing with taking or possession of walleye would be changed from what it is now. **Mr. Graham** said he didn't think so.

SENATOR CRIPPEN asked **Mr. Graham** if he would like some time to consider this matter. **Mr. Graham** replied that he would as the matter may have been discussed with his staff but he hadn't been informed.

SENATOR CRIPPEN said a bill would be coming from the House dealing with transportation of fish in live wells. People want to bring walleyes home fresh, but the House bill would prohibit that. The House bill was introduced because people are illegally transplanting fish. The egg gathering program at Lake Mary Ronan has been nearly destroyed by illegal introductions. Walleye have been illegally introduced into Canyon Ferry. He said he and **REPRESENTATIVE HARPER** have grave concerns and he wanted to make sure there is no unintentional scuttling of the House bill by this requested resolution.

Mr. Johnson replied that the House bill is about transporting and live wells and would have nothing to do with declaring walleye a native species.

SENATOR SPRAGUE stated that he would defer his questions until DFWP reviews the resolution.

Mr. Johnson said he appreciated the committee's time and would check back with the chairman. **CHAIRMAN MESAROS** commented that he would look forward to receiving information from **Mr. Graham.**

(Tape: 1; Side: Side B; Approx. Counter: 36)

EXECUTIVE ACTION ON SB 211

CHAIRMAN MESAROS stated that the first two amendments to SB 211 were for clarification purposes. Some discussion had centered

around "willful" and "malicious" in Section 4; these terms are addressed in the third amendment.

The fourth amendment was a result of **SENATOR KLAMPE'S** question regarding whether or not a two-thirds majority would be required on this bill because liability was being limited for a public entity. Greg Petesch of the Legislative Council has confirmed that the two-thirds majority rule does apply to this bill. Also, a contingency clause entitled "NEW SECTION. Section 11" has been added, stating that if the legislature fails to pass this act by the two-thirds vote required in section 10, then the first sentence of section 2(2) is amended to read: "'Owner' means a private person or entity of any nature."

Motion: SENATOR HERTEL MOVED THE AMENDMENTS.

SENATOR CRIPPEN asked if he were correct in assuming that if Billings charged for the use of a city park where a person was injured, Sections 1-4 would not apply. **Mr. Paxinos** agreed that was correct from the point of view of the bill drafters.

Mr. Lane said it was his understanding that HB 195 would be amended or coordinated to refer to this bill, should it pass. That bill already refers to the recreational use statute as a shield for landowners who do not charge. Should SB 211 take its place, he believed there would be coordinating instructions referring to the immunity shield.

SENATOR SPRAGUE asked if **Mr. Lane** were comfortable with SB 211. **Mr. Lane** replied that his department was monitoring this bill as well as HB 195 to be sure DFWP would be covered with an immunity shield under either bill.

SENATOR BISHOP commented that it has been an interesting question, and asked if the bill drafters had given any consideration to minors in vehicles who weren't charged. **Mr. Paxinos** replied that the intent of the drafters would be not to punish minors (who were not charged) under a different standard of care because they were with parents who did get charged.

SENATOR CRIPPEN commented that even if the bill drafters say there will be no exception for minors, the bill itself does not say that. The word "person" is not defined.

MR. PAXINOS responded that this bill is not intended to give people an opportunity to circumvent willful acts because they didn't charge for children.

SENATOR CRIPPEN stated that Section 3 limits liability for landowners who do not charge for recreational use of their property whether they directly or indirectly invite people to use it. It also states that the landowner does not offer any assurance that the property is safe for recreational purposes.

STAN KALECZYC, representing the City, Town and Municipal Insurance Authority, testified that his organization is in favor of clarifying the existing law. He suggested looking at sections 301 and 302. His recollection of the law was that if a landowner allowed someone on his property for recreational purposes and did not charge, a recreational immunity applies. The words in SB 211 are different but the intent is the same. His group wants to be sure this same immunity applies to government entities.

SENATOR WILLIAM CRISMORE, SD #41, LIBBY, commented that he was becoming more confused and asked if he would have immunity if he let friends, but not the general public, on his land to shoot gophers. There would be no signs allowing the public in; they would be allowed to do some things but not others. He asked if it would be necessary to have your land completely open to have it covered.

MR. PAXINOS said private landowners already have recreational immunity. The idea of the bill is to get the same standards for cities, counties and states.

SENATOR KLAMPE asked if private landowners already have exactly the same thing that is being proposed in this bill. **Mr. Paxinos** said that to the best of his knowledge they do.

SENATOR KLAMPE said the wording of the bill wasn't totally clear. Some land is basically open; he asked if the owners of that type of land were immune from liability. **Mr. Paxinos** responded that they already have a lower standard of care as private landowners. It is part of common law. Cities, states and counties don't have that immunity.

SENATOR CRIPPEN asked if a landowner is in a different category if he has a ranch where he allow people to hunt and fish but not spelunk, putting a restriction on the type of activities allowed; the bill says recreational purposes without charge and recreational purposes are defined.

MR. KALECZYC stated that if people are allowed to hunt and fish without charge but a charge is made for spelunking and someone gets hurt, that person can sue under a different standard. He thought landowners could be selective on access to their land.

SENATOR SPRAGUE asked if all members of a family would be treated equally if they entered public or private property, pay a fee, and bring children. **Mr. Kaleczyc** stated that in cases where there is a fee for the car and children are free, he believed the court would hold to the higher standard.

BOB JOVICK, City Attorney for Livingston, commented that one would think common sense and equal protection where there had been a vehicle charge would mean there would be a liability. An amendatory definition is needed for "charge for a vehicle" where an adult is charged and a minor isn't.

Mr. Jovick commented that under the Federal Tort Claims Act the federal government is held to the same level of care as private individuals. This bill is merely trying to treat cities and counties the same as individuals.

Vote: ALL VOTED AYE ON THE AMENDMENTS TO SB 211 AND THEY PASSED UNANIMOUSLY.

Motion:

SENATOR SPRAGUE MOVED THE BILL AS AMENDED.

Discussion:

SENATOR HERTEL commented that the bill had some real merit. There were some concerns by landowners who felt that HB 195 did not cover them in all respects and thought this bill would do that. Liability is a big concern. He supported the bill.

SENATOR MILLER said he thought the bill needed a statement of intent.

ANDREA MERRILL, Legislative Council Staff, told **SENATOR MILLER** that the bill has a statement of purpose. That is used to state the intent of the bill and make it clear. A statement of intent is customarily used on rule making for a state agency.

Vote:
SENATOR KLAMPE WAS OPPOSED TO THE BILL. ALL OTHERS IN ATTENDANCE VOTED AYE ON THE MOTION THAT SB 211 DO PASS AND THE MOTION CARRIED.

EXECUTIVE ACTION ON SB 269

Motion & Vote :

SENATOR HERTEL MOVED THE BILL AND THE MOTION THAT SB 269 DO PASS CARRIED BY UNANIMOUS VOTE.

MONTANA SENATE
1995 LEGISLATURE
FISH AND GAME COMMITTEE

ROLL CALL DATE 2/02/95

NAME	PRESENT	ABSENT	EXCUSED
BRUCE CRIPPEN	X		
WILLIAM CRISMORE	X		
JOHN HERTEL	X		
KEN MILLER	X		
MIKE SPRAGUE	X		
GARY FORRESTER	X		
JUDY JACOBSON	X		
TERRY KLAMPE	X		
BOB PIPINICH	X		
AL BISHOP, VICE CHAIRMAN	X		
KEN MESAROS, CHAIRMAN	X		

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SENATE STANDING COMMITTEE REPORT

February 2, 1995

MR. PRESIDENT:

We, your committee on Fish and Game having had under consideration SB 211 (first reading copy -- white), respectfully report that SB 211 be amended as follows and as so amended do pass.

Signed: _____
Senator Ken Mesaros, Chair

That such amendments read:

1. Page 1, line 18.
Following: "asked"
Insert: "from a person engaged in a recreational activity"

2. Page 1, line 26.
Following: "property"
Insert: "or with an agreement to use or occupy property"

3. Page 3, line 8.
Strike: "malicious"
Insert: "wanton"

4. Page 4, line 27.
Following: line 26
Insert: "NEW SECTION. **Section 10. Two-thirds vote required.** Because [sections 1 through 4] limit governmental liability, Article II, section 18, of the Montana constitution requires a vote of two-thirds of the members of each house of the legislature for passage."

NEW SECTION. **Section 11. Contingency clause.** If the legislature fails to pass [this act] by the two-thirds vote required in [section 10], then the first sentence of [section 2 (2)] is amended to read: ""Owner" means a private person or entity of any nature."

-END-

Amd. Coord.
Sec. of Senate

281540SC.SRF

DATE 2/02/95

SENATE COMMITTEE ON Senate Fish & Game

BILLS BEING HEARD TODAY: SB 269, Executive SB 211

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
Beate Galda	FWP	269	X	
Bob Lane	FWP	269	X	
Janet Ellis	MT Audubon	269	X	
Bob Winfield	FWP	269	X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

REGISTER.F10

MINUTES

MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **BRUCE D. CRIPPEN, CHAIRMAN**, on February 9, 1995, at 10:00 A.M.

ROLL CALL

Members Present:
Sen. Bruce D. Crippen, Chairman (R)
Sen. Al Bishop, Vice Chairman (R)
Sen. Larry L. Baer (R)
Sen. Sharon Estrada (R)
Sen. Lorents Grosfield (R)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Mike Halligan (D)
Sen. Linda J. Nelson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Valencia Lane, Legislative Council
Judy Feland, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing: SB 276, SB 297, SB 211, SB 314
Executive Action: SB 149, SB 297, SB 314

HEARING ON SB 314

Opening Statement by Sponsor:

SENATOR DON HARGROVE, Senate District 16, Belgrade, sponsored SB 314. He said the bill is not lengthy but requires a little bit of history in explanation. The Law Enforcement Academy has been in Gallatin County for the last 20 years and has been operating well. There are some compelling reasons to leave it there. Because of its success and its value to the state, it has been expanding and it needs some expansion in terms of physical environment. Gallatin County had a $1.5 million dollar bond issued during the last election to do just that. The voters

cooperative relationship. The university had assisted them in providing meals and recreational services for the officers who train there, and the university would certainly want to continue that relationship in Bozeman.

SENATOR SUE BARTLETT asked **Sheriff Chuck O'Reilly** of Helena if there was support for bringing the Law Enforcement Academy to the Mountain View campus. **Sheriff O'Reilly, Sheriff of Lewis and Clark County and also Legislative Chairman for the Montana Sheriff's and Peace Officers' Association,** said that the board of the association unanimously voted to support Governor Racicot's attempt to move the Montana Law Enforcement Academy to the Mountain View School here in the Helena Valley. As a former student of the Bozeman facility, he appreciated **SENATOR HARGROVE'S** effort to assure the continuity of the academy. He said the association's position was such that they had been living with a temporary facility for years. He said they want to see a permanent academy, and the association believed that the Governor's proposal was the most viable and practical.

Closing by Sponsor:

SENATOR HARGROVE reiterated that he, as the representative of his district, and the Bozeman officials support the Governor's proposal if that proposal remains viable. If it doesn't, he felt that Bozeman is the best place for a variety of reasons and one of the more important ones was their relationship with Montana State University. This proposal is to be viable only in the event that the Governor's proposal is not accepted.

HEARING ON SB 211

Opening Statement by Sponsor:

SENATOR TOM KEATING, Senate District 5, Billings, sponsored SB 211. He said the bill dealt with limited liability for the recreational use of property. He pointed out that Line 7-8 of the heading repeals Section 70-16-301 and 302, which is the current language for recreational use liability. This bill would replace that language with a clarification. He stated that there had been two court cases which had clouded the interpretation of the issue. This bill would require a 2/3 vote, he said, because SB 211 would repeal one section and replace it, and also because it exempts the state from liability for recreational use. He turned the bill over to technical legal officers from Yellowstone County for an explanation.

Proponents' Testimony:

Charles Brooks, representing the Yellowstone County Commissioners, said there was a clear statement of purpose contained within the bill itself. He said that he hoped it would not be interpreted that this was a "Billings bill," but rather a

statewide bill to protect both private property owners as well as public property owners who extend recreational use of the land for no charge. He said we are living in a time when some people want the risk of living with little desire to take responsibility for their own actions, and then have someone else pay for what happens to them even if it is their own fault. He said that without this type of legislation, municipalities would have to reconsider plans to build bike paths and nature trails. They would be hesitant to expose themselves to the liabilities involved. He submitted a letter to **SENATOR KEN MESAROS** from **Harold Hanser,** a former county attorney. This bill is a composite of the efforts of **Mr. Hanser**; current County Attorney, **Dennis Paxinos; Rocky Brown, Jr.,** the attorney for the big ditch in Billings; **Larry Martin,** attorney for the school districts; and **Jim Tillson,** attorney for the City of Billings. They took as their foundation the Nebraska law, which was taken all the way to the Supreme Court and has held. He asked careful consideration to the document. **(EXHIBIT 1)** He read a statement from the memo, "the issue plainly stated is whether Montana sees a greater public good in expanded use of land and recreational use or in restricting such use in favor of liability litigation."

Mark Watson, City Administrator, City of Billings, briefly described how the pending law would affect his community. Numerous volunteer groups had opened hundreds of acres of land in the Yellowstone River Basin. They had held fund-raising events and were currently developing parkways up and down the river. To complement that they have developed a Bike-net Program, with planning funds from the State of Montana in conjunction with the commissioners involving the first $600,000 phase. This could interact with the Billings Irrigation Greenways that could be utilized for recreation purposes, but the irrigation directors will not open those areas unless the liability is addressed. He thought the implementation of these types of programs were important not only in Billings, but would improve the quality of life all over Montana. The right to sue would always be available, he said, if there was evidence of wanton or willful acts. He asked the committee for careful consideration.

Dennis Paxinos, Yellowstone County Attorney, said he was part of the drafting committee for the proposed statute. He said several attorneys had worked on this problem and asked **SENATOR KEATING** to present the bill, showing its non-partisan nature in the agreement between the sponsor and **Mr. Hanser.**

Mr. Paxinos said that in the past there was a general rule, a person "could not sue the king," meaning that no city, county or state entity was subject to lawsuits or liability. It had changed through the years, he explained, so that a person could sue if willful, malicious conduct causing injury could be shown. The statute they proposed was in the codes prior to 1972 and carried over. In 1970, the statute was interpreted by Supreme Court Justice **Wesley Castles** and determined that the leasee of the "king" could be sued. It was also interpreted by Federal

Judge **Smith** in another case in Glacier Park wherein a small girl was killed in a bulldozer accident which she should not have been on. The judge, interpreting a state statute, said the law also extended to the federal government, but found there was no liability to the federal government. **Mr. Paxinos** said that it stood to reason that if Montana Power and the federal government could get an immunity from being sued from **Judge Castles,** then the state would be free from lawsuits as well, except in the case of wanton and willful acts. In August of 1994 in Billings, **Judge Holmstrom** ruled that the statute did not apply; there was no immunity from negligent acts. This was a completely different interpretation from either **Judges Castles or Judge Fisher.** He said that prior to the ruling a swimming accident had occurred in Billings at a pond which the city had been charging people to swim in. A child drowned in the pond. The pond was marked that no lifeguard would be on duty. The parents brought suit and it was found that because the city charged for use of the pond, they could not come under the provisions of the statute. The city removed the fees and disallowed swimming in the pond. In August of 1994, a child was injured in a fall after she climbed a tree from a picnic table someone had moved next to the tree. That family also sued. City Attorney **Jim Tillotson** filed a summary judgement motion based upon the current statute saying they were not responsible for the negligent acts of others, and **Judge Holmstrom** ruled this statute did not apply and that they had to defend the lawsuit. The city was able to prevail, he said, but the point is that cities, towns, and counties are devoting their resources to defending themselves in negligent acts of others. He said their drafting group had researched the laws of Nebraska which seemed to address the same problems. The whole idea is to clarify for the district court judges and members of the public that the idea is to allow property to be used for recreational purposes provided they do not make a charge for it. He said it would prevent needless litigation and all the costs associated with it in order to get land turned over for recreational purposes. The state is trying to offer more and more tourism and activities and people are willing to donate their land, but he thought they would not want to participate if they thought someone would sue them if injuries would occur on their properties. He urged adoption of the statute. He said it would go a long way toward adopting what everyone had always thought the current law intended.

Stan Kaleczyk, representing the Montana Municipal Insurance Authority, which he said was the group insurance program for cities and towns in Montana including Billings. His organization supported the legislation. He said his organization defended the suit **Mr. Paxinos** had just related in Billings. He stated that they went into the lawsuit believing that the statute applied to local governments. The judge's rationale was that city parks in Montana predated 301 and 302, the existing recreational immunity statutes. An appeal could not be granted to them because they received a defense verdict. He said that this bill was a common sense approach that ought to be taken by the legislature that

said the cities, towns and counties, as well as the state, should enjoy the same immunities and privileges as a private landowner.

Bob Stevens, representing the Montana Grain Growers Association, supported SB 211. He said this bill would help the agricultural community in regard to recreational lands.

Opponents' Testimony:

Russell Hill, representing the Montana Trial Lawyers Association, (MTLA), read from submitted testimony and also reviewed proposed amendments. **(EXHIBIT 2)**

Informational Testimony:

A hand-out, "Current Montana Law," was submitted by an unknown donor. **(EXHIBIT 3)**

Questions From Committee Members and Responses:

SENATOR STEVE DOHERTY asked **Mr. Paxinos** why the drafting committee took such a departure from Montana statute and wanted to adopt the Nebraska statute, especially if there was case law in the Montana statute?

Mr. Paxinos replied that they attempted to find a statute already on the books that addressed the specific issues that **Judge Holmstron** had addressed and had already been ruled upon by a higher court. They contacted the Nebraska officials and found that their recreational people had not been sued since enactment of the law.

SENATOR DOHERTY further inquired if they incorporated current statute, 7-16-302, which references recreational use of any property, and inserted "governmental property," then would it address the judge's concern about the pre-dating of the parks, etc.? He said that would give instruction to the court to grant government landowners what is granted private landowners for recreational purposes.

Mr. Paxinos said it would perhaps clarify the point. He said an added concern would be the donated land and property safeguards. He wasn't sure the amendment would include that issue. He said they were thinking mostly of leased land at nominal price used for bike and hiking trails.

SENATOR DOHERTY asked **Mr. Kaleczyk** to respond to the question.

Mr. Kaleczyk said that with recreational easements where the private property owner retains title, he was not sure that the words suggested may cover it, but with fine-tuning, may work.

SENATOR HALLIGAN asked **Mr. Kaleczyk** about the $5.00 recreation fee for public lands. He asked if that was considered "a charge"

under this ruling to make government liable?

Mr. Kaleczyk said he wasn't involved in the drafting. He thought a charge is a charge, and the issue would no longer come under the terms of SB 211.

SENATOR HALLIGAN asked about the attractive nuisance doctrine, as related to driving on a highway, and whether or not the doctrine would be abolished or defeated unknowingly.

Mr. Kaleczyk said driving on the highway would not be in his understanding of what the statute would do. His concern was more of "natural attractions" on the land, which he did not think would be considered an attractive nuisance, such as a tree in a park. He did think any judicial interpretation of attractive nuisance would fall into that category.

SENATOR REINY JABS asked how the law would relate to a landowner allowing goose hunting on his land. He said if the owner did not charge a fee, but the hunter left a goose on the doorstep, would it be considered a charge?

Mr. Paxinos said it would be considered a gift.

CHAIRMAN CRIPPEN asked about the 2/3 provision. He questioned why they would need that, especially if they accepted **SENATOR DOHERTY'S** amendments.

SENATOR HALLIGAN said it was clarifying governmental immunity and would require a 2/3 vote.

Valencia Lane stated that it was an expansion and they would be granting immunity for some activities that would not have been immune before. Also some types of land may be covered that were not covered before, she said.

CHAIRMAN CRIPPEN said the language "or leased by" may be a concern because he understood they wanted to be covered, for instance, bike path land that is leased.

SENATOR HALLIGAN stated that there are places not leased to be included, such as recreation corridors. In that instance landowners had banded together to allow use and the immunity should be extended to include them.

Valencia Lane said it could always be challenged on the basis that whatever you do, if you don't have the supermajority vote requirement, the bill probably would be challenged.

Mr. Hill was asked to comment on the 2/3 vote rule. He said his amendments were offered from a position of weakness. Even if the committee were to adopt all of MTLA's amendments, the bill would still expand the limited immunity and need the majority vote, he said. He was uncertain about **SENATOR DOHERTY'S** amendment, which

he understood to be a clarification of current law.

SENATOR HALLIGAN said he sensed the Democrats on the committee would want to accomplish what the bulk of the communities would want to do. He did not think a 2/3 vote would be a problem.

CHAIRMAN CRIPPEN said he was trying to reach a committee conclusion whether or not the 2/3 vote was required.

SENATOR DOHERTY said it was his understanding that whatever they would adopt would also include parks that had predated the action or public lands that had predated the actions. He wanted the understanding to be included in the record.

Closing by Sponsor:

SENATOR KEATING closed on SB 211. He reminded the committee that SB 211 was not just a "Billings bill." He recognized the source was Billings and that Billings officials were brought in to testify. He said that County Attorney Jovick from Livingston had stopped by to voice his support for the bill as well. He said it affects all of Montana.

The Senator said the agricultural community was putting together a similar bill to grant further immunity for recreational use of agricultural property. There is a perception that there is not sufficient protection right now for immunity from lawsuits for recreational use. He said landowners perceive the liability threat and many are taking unnecessary precautions to protect themselves. He said the grapevine would work if this measure was passed and people would soon realize they were not in harm's way or jeopardy in allowing recreational use. He said taxpayers' dollars would be better spent in other areas than in litigations over cities and towns. He asked the committee to take away some of the anxiety and give peace of mind to landowners in allowing use of volunteer property.

HEARING ON SB 297

Opening Statement by Sponsor:

SENATOR STEVE DOHERTY, Senate District 24, Great Falls, presented SB 297. He said it stemmed from an unhealthy interest he held in uninsured motorists and their privilege to use the roads in Montana without the concurrent responsibility of maintaining what was deemed to be adequate insurance on those vehicles. He said the issue was brought to his attention by a deputy county attorney in Cascade County who felt that they needed to add points to an individual's license when they are convicted of driving without insurance. Last session, he said, the fines were increased and seizure of license plates and registration were allowed. This bill would allow for some clean-up on the first three pages. The language on page 4 would simply put five points on to the record of a uninsured motorist violation. He said the

MONTANA SENATE
1995 LEGISLATURE
JUDICIARY COMMITTEE

ROLL CALL DATE 2-9-95

NAME	PRESENT	ABSENT	EXCUSED
BRUCE CRIPPEN, CHAIRMAN	✓		
LARRY BAER	✓		
SUE BARTLETT	✓		
AL BISHOP, VICE CHAIRMAN	✓		
STEVE DOHERTY	✓		
SHARON ESTRADA	✓		
LORENTS GROSFIELD	✓		
MIKE HALLIGAN	✓		
RIC HOLDEN	✓		
REINY JABS	✓		
LINDA NELSON	✓		

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HAROLD F. HANSER
ATTORNEY

TRANSWESTERN I, RM 127
404 N. 31ST ST.
BILLINGS, MT 59101

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 1
DATE 2-9-95
BILL NO. SB 211

OFFICE (406) 255-7163
RESIDENCE (406) 259-9655

To: Senator Ken Mesaros
Fish and Game Committee
From: Harold Hanser
Re: SB 211 (Gratuitous Permittee for Recreation, Title 70, Section 16, Part 3, MCA)
Date: January 31, 1995

1. The Montana Gratuitous Permittee for Recreation legislation (Title 70, Section 16, Part 3) was first enacted in 1965. I have to assume this was a model bill as many other states enacted similar legislation in the same time frame. The intent was to make land available for recreational purposes where the landowner granted permission and did not make a charge for the entry.

2. There is one Montana Supreme Court case, *State ex rel Tucker v. District Court*, 468 P2d 733 (1970); and one federal case, *Fisher v. U.S.*, 534 F Supp 514 (1982) which specifically address our Gratuitous Permittee for Recreation statute. There is one more recent case where the issue presented was whether or not a charge was made for entry to a play ground owned by a home owners association. The court did not suggest the association was not a landowner under the statute, but did determine the dues constituted a charging.

3. The *Tucker* case involved litigation against Montana Power Company for injury received by a member of a recreational group riding on the power company tram located at the Mystic Lake power plant. The supreme court held that the power company as a licensee from the Federal government was entitled to assert the gratuitous permittee statute as an affirmative defense under which they could be liable only for willful or wanton conduct. The court also held that Montana Power qualified as a *landowner or tenant*, as those terms were used in the statute, and that the word *property* included both real and personal.

The *Fisher* case involved the interpretation of the gratuitous permittee statute to determine the liability of the federal government for the death of a boy on the Lee Metcalf National Wildlife Refuge. A Missoula school had booked a free guided tour by the Fish and Wildlife service as part of the educational program for a group of kindergarten and special education students. Prior to starting the tour, the group ate lunch and disregarding the teacher's instructions, some of the children, including the deceased, played on a snow plow blade which fell on the plaintiff's daughter and killed her. The plaintiff claimed

the trip was educational and thus the federal government was not entitled to the affirmative defense of the gratuitous permittee statute.

Judge Russell E. Smith held:

(1) The purpose of the Montana recreational use statute is to encourage landowners to make their lands freely available to the public by limiting the landowner's tort liability;

(2) while the general purpose of a law may not control specific unambiguous language of it, policy gives guidance in cases where interpretation is needed;

(3) Montana's recreational use statute applies in any case where entry onto land is made for what could reasonably be regarded by the general public as a recreational purpose, regardless of some different purpose in the mind of a particular user; and

(4) Montana's recreational use stature, which limits liability of a landowner to a person who is permitted on the property for recreational purposes, applied in a wrongful death suit brought under the Federal Tort Claims Act by parents of the child who was killed while playing during a school field trip to federally owned wildlife refuge since the child entered the land for recreational purposes under the statute, despite the contention that the field trip was educational, and thus in view of the lack of contention that the employees of the federal government were willful or wanton, the United States could not be held liable, even assuming negligence of its employees.

4. SB 211 is offered to clarify the definition of *landowner*. In a case this last fall in the 13th Judicial District, Judge Holmstrom ruled that the City of Billings was not a landowner within the statute. The case was not appealed as the jury found for the city. The ruling by Judge Holmstrom appears to be at odds with the previous cases, but be that as it may, in light of this case, the ditch companies are not going to negotiate recreational use and the liability exposure of other governmental entities as school districts, counties and conservation districts is going to dramatically increase if the definition of landowner is not clarified.

5. The initial drafting of SB 211 was the work product of myself, Rocky Brown, atty for the Big Ditch Company, Jim Tillitson, Billings city attorney, Dennis Paxinos, Yellowstone county attorney and Larry Martin, school district #2. We used the Nebraska law a model as it seemed to present the issues in a better way. Likewise the Nebraska Supreme court has held that governmental entities are covered under their statute so there is a body of good

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case law for our courts to follow. For what it is worth there have no recent Nebraska supreme court cases after an initial group brought against governmental entities when the law was first enacted.

6. It is important to note that SB 211 does not change the existing law as interpreted in the *Tucker and Fisher* cases. It does not allow access to either public or private land without express permission. The higher standard of negligence is available only when there is no charge for the entry. Given the concern raised by Judge Holmstrom's ruling in the City of Billings case, the availability of both public and private land for gratuitous recreational use will be greatly diminished and the cost for liability insurance dramatically increased if SB 211 is not enacted.

7. The issue, plainly stated, is whether Montana sees a greater public good in expanded use of land for recreational use or in restricting such use in favor of liability litigation.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 2
2-9-95
SB211

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Montana Trial Lawyers Association

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February 9, 1995

Sen. Bruce Crippen, Chair
Senate Judiciary Committee
Room 325, State Capitol
Helena, MT 59620

RE: Senate Bill 211

Mr. Chair, Members of the Committee:

Thank you for this opportunity to express MTLA's opposition to Senate Bill 211, which dramatically alters current Montana law regarding recreational-use immunity.

Background. The impetus for this bill apparently came from a preliminary ruling by a Billings judge in a lawsuit which the City of Billings subsequently won. That ruling was never appealed and has no precedential authority. It certainly does not upset current Montana law, which (as the proponents of SB 211 themselves agree) extends recreational-use immunity to governmental landowners. See, for example, *Fisher v. U.S.*, 534n F.Supp 514 (1982), in which a federal district court applying Montana law ruled that the government, as owner of the Lee Metcalf National Wildlife Refuge, was immunized by Montana's recreational-use statute from liability for a young girl who died on an educational field trip when a raised snowplow blade fell.

With such slim justification, however, SB 211 proposes to completely abolish Montana's current recreational-use statutes, Secs. 70-16-301 and 70-16-302, MCA, and start from scratch with new legislation designed primarily to protect governmental, not private, property owners. Where a previous Montana Legislature enacted law encouraging landowners to make natural, undeveloped land accessible for recreation for free, the proponents of SB 211 are asking this Legislature to enact a law which grants immunity to landowners *regardless of the character of the property, and regardless of the public's right already to access the property.*

Senate Bill 211. This bill uses incredibly broad and imprecise language to exempt

government, commercial enterprises, and urban and rural property owners alike from accountability for their carelessness:

- The expansive definition of a property "owner" now genuinely includes "a person or entity of any nature": not just real private or governmental landowners, but also tenants, occupants, lessees, and anyone else in control of property or using property. ***In fact, many so-called recreationists prejudiced by SB 211 will actually be owners.***

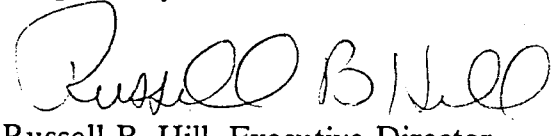
- The expansive definition of "property" no longer includes just natural, undeveloped land which an owner cannot reasonably maintain in a safe condition for recreationists. The definition of "property" now includes property which is extensively developed and requires constant maintenance: ***highways, shopping centers, amusement parks, health clubs, sports stadiums, racetracks, even swimming pools and hot tubs.*** Regardless of the intent of proponents, the language of SB 211 extends immunity to virtually every situation where an injury occurs during so-called recreational use of property.

- The expansive definition of "recreational purposes" no longer includes just outdoor activities in primarily natural settings. Anything that "serves to refresh a person's mind or body by amusement, stimulation, or exercise" will reduce accountability--from pleasure driving to exercising in a health club, from shopping to attending sports events. Moreover, since virtually every activity of young children comes within the definition of "recreational purposes" in SB 211, the bill will substantially abandon Montana's long-held "attractive nuisance" doctrine which protects small children from attractive dangers.

- The restrictive definition of "charge" in the bill encompasses only money and ignores the many other types of valuable consideration that can transform gratuitous access into paid access. Just as importantly, this restrictive definition guarantees that many so-called owners who actually receive substantial benefits in return for granting access to their property will nevertheless obtain immunity simply because a specific so-called recreationist did not pay money directly to that owner.

MTLA urges this committee to limit the global and unintentional scope of SB 211 by clarifying such definitions. If MTLA can provide more information or assistance to the Committee, please notify me. Thank you again for this opportunity to oppose SB 211.

Respectfully,



Russell B. Hill, Executive Director

Amendments to Senate Bill No. 211
Second Reading Copy

Requested by the Montana Trial Lawyers Association
For the Senate Judiciary Committee

Prepared by Russell B. Hill
February 9, 1995

1. Page 1, line 22.
Following: "property"
Strike: remainder of line 22 through "government" on line 23.

Reason for the amendment: Without deleting the entire subsection (b), this amendment still clarifies that a landowner which rents access to property to a group, organization, corporation, or governmental entity still owes a duty of care to that renter.

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SB 211

Amendments to Senate Bill No. 211
Second Reading Copy

Requested by the Montana Trial Lawyers Association
For the Senate Judiciary Committee

Prepared by Russell B. Hill
February 9, 1995

1. Page 1, line 30.
Following: "any"
Insert: "outdoor"

Reason for the amendment: This amendment clarifies the intent of the bill and its proponents, consistent with current law, that recreational purposes consist of outdoor activities and do not include indoor activities at developed facilities which require extensive maintenance.

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Amendments to Senate Bill No. 211
Second Reading Copy

Requested by the Montana Trial Lawyers Association
For the Senate Judiciary Committee

Prepared by Russell B. Hill
February 9, 1995

1. Page 2, line 19.
Following: "purposes."
Insert: "The term does not include such activities as pleasure driving on state highways, casual shopping in stores, amusement park rides, pleasure cruises, exercise at health clubs, participation or attendance at organized athletic events, and similar activities."

Reason for the amendment: This amendment, or any substantially similar amendment, will clarify the expressed intent of the bill and its proponents that the term "recreational purposes" does not include <u>every</u> activity which "serves to refresh a person's mind or body by amusement, stimulation, or excercise."

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SB 211

Amendments to Senate Bill No. 211
Second Reading Copy

Requested by the Montana Trial Lawyers Association
For the Senate Judiciary Committee

Prepared by Russell B. Hill
February 9, 1995

1. Page 3, line 11.
Strike: "charges" on line 11
Insert: "allows"

2. Page 3, line 12.
Following: "purposes"
Insert: "in exchange for valuable consideration"

Reason for the amendment: This amendment will clarify that non-monetary benefits received by a landowner may also amount to payment for access to property. This amendment will guarantee that the intent of the bill and its proponents to address gratuitous access cannot be subverted (1) when a recreationist pays for access with something other than money, i.e., with labor, reciprocal access to other property, etc.; (2) when a recreationist gains access by virtue of payments from someone else, i.e., as a non-paying guest of someone who does pay; and (3) when a recreationist pays one owner but not another.

Amendments to Senate Bill No. 211
Second Reading Copy

Requested by the Montana Trial Lawyers Association
For the Senate Judiciary Committee

Prepared by Russell B. Hill
February 9, 1995

1. Page 2, line 30.
Following: "method."
Insert: "The provisions of [sections 1 through 4] do not apply to limit the liability of one owner to another."

Reason for the amendment: This amendment clarifies the intent of the bill and its proponents to extend limited immunity to non-owners, i.e., persons who have no right of their own to enter upon property for recreational purposes. This amendment will guarantee that the bill does not alter any pre-existing rights or duties between respective "owners" of property, i.e., ranch hands and ranchers; tenants and landlords; lessees and landowners; etc.

EXHIBIT 2
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SB 211

Amendments to Senate Bill No. 211
Second Reading Copy

Requested by the Montana Trial Lawyers Association
For the Senate Judiciary Committee

Prepared by Russell B. Hill
February 9, 1995

1. Page 2, line 22.
Following: "person"
Insert: "who is not also an owner"

Reason for the amendment: This amendment clarifies the intent of the bill and its proponents to extend limited immunity to non-owners, i.e., persons who have no right of their own to enter upon property for recreational purposes. This amendment will guarantee that the bill does not alter any pre-existing rights or duties between respective "owners" of property, i.e., ranch hands and ranchers; tenants and landlords; lessees and landowners; etc.

6

Amendments to Senate Bill No. 211
Second Reading Copy

Requested by the Montana Trial Lawyers Association
For the Senate Judiciary Committee

Prepared by Russell B. Hill
February 9, 1995

1. Page 1, lines 21-23.
Strike: Subsection (b) in its entirety

Reason for the amendment: This amendment will clarify the intent of the bill and its proponents to extend limited immunity for gratuitous recreational use. This amendment will protect citizens and taxpayers who do not need a landowner's permission to enter upon the property at issue.

CURRENT MONTANA LAW

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 3
DATE 2-9-95
BILL NO. SB 211

Part 3
Gratuitous Permittee for Recreation

Part Cross-References

Recreational use of streams, Title 23, ch. 2, part 3.

Limitation on landowner liability to recreationists, 23-2-321.

Smith River Management Act, Title 23, ch. 2, part 4.

Liability, Title 27, ch. 1, part 7.

70-16-301. Recreational purposes defined. "Recreational purposes", as used in this part, includes hunting, fishing, swimming, boating, water skiing, camping, picnicking, pleasure driving, winter sports, hiking, touring or viewing cultural and historical sites and monuments, spelunking, or other pleasure expeditions.

History: En. Sec. 2, Ch. 138, L. 1965; R.C.M. 1947, 67-809; amd. Sec. 1, Ch. 531, L. 1987; amd. Sec. 8, Ch. 264, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 264 near end inserted "spelunking"; and made minor changes in style.

Cross-References

"Recreational use" defined, 23-2-301.

70-16-302. Restriction on liability of landowner or his agent or tenant. (1) A person who makes recreational use of any property in the possession or under the control of another, with or without permission and without giving a valuable consideration therefor, does so without any assurance from the landowner, his agent, or his tenant that the property is safe for any purpose. The landowner, his agent, or his tenant owes the person no duty of care with respect to the condition of the property, except that the landowner, his agent, or his tenant is liable to such person for any injury to person or property for an act or omission that constitutes willful or wanton misconduct.

(2) The department of fish, wildlife, and parks, when operating under an agreement with a landowner or tenant to provide recreational snowmobiling opportunities, including but not limited to a snowmobile area, subject to the provisions of subsection (1), on the landowner's property and when not also acting as a snowmobile area operator on the property, does not extend any assurance that such property is safe for any purpose, and the department, the landowner, or the landowner's tenant may not be liable to any person for any injury to person or property resulting from any act or omission of the department unless such act or omission constitutes willful or wanton misconduct.

History: En. Sec. 1, Ch. 138, L. 1965; R.C.M. 1947, 67-808; amd. Sec. 3, Ch. 209, L. 1987; amd. Sec. 8, Ch. 440, L. 1987.

Cross-References

Responsibility and liability of snowmobile area operators, 23-2-651 through 23-2-656.

DATE 2-9-95

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: SB 276, 297, 211, 314

< ■ > PLEASE PRINT / < ■ >

Name	Representing	Bill No.	Check One: Support	Check One: Oppose
~~Art~~				
Charles R Brooks	Yellowstone Ct	SB211	✓	
STAN KALLEVIG	MT MUNICIPAL INSURANCE AUTHORITY	SB 211	✓	
MARK WATSON	CITY OF BILLINGS	SB 211	✓	
STEVE MORRIS	Helena	276		✓
Barbara Morris	Helena	276		✓
SHARON HOFF	MT CATHOLIC CONF	SB276	✓	
Sarah Bond	Attorney General	SB189	X	
Brenda Nordlund	"	"	"	
MARY ELLERD	MTPOA	SB276	✓	
ELLEN EUGSTEDT	Doug Gamble with Heritage	SB276	X	
DAVID H ERICH	MT Assoc. of Churches	SB276	X	
STEVE JOHNSTON	MINI MART INC	SB276		X
LAURIE KOUTNIK	Christian Coalition of MT	SB276	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 2-9-95

SENATE COMMITTEE ON JUDICIARY

BILLS BEING HEARD TODAY: SB 276-297-211-314

< ■ > PLEASE PRINT < ■ >

Name	Representing	Bill No.	Check One: Support	Check One: Oppose
Rep Bob Lashbrook	HD 37 Butte	SB 276		X
LARRY AKEY	MONT COIN MACHINE OPERATORS ASSOC	SB 276		✓
Ken Hoovestol	MT. Snowmobile Assn.	211	✓	
Pat Melby	Rimrock Foundation	SB 27	✓	
Tom Huddleston	City of Helena	276	✓	
Rich & Miller	Mt. La County Tavern	276		✓
Dennis Casey	GTA	276		✓
YVONNE K. JOHNSON	YACHT BASIN BAR & REST	276		✓
Roselee Bullock	Tri County Tavern	276		✓
Chester Bullock	Silver Saddle Basin	276		✓
Orville Johnson	2055 Yacht Basin Bar & Rest	276		✓

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

MINUTES

MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN BRUCE D. CRIPPEN**, on February 14, 1995, at 8:00 A.M.

ROLL CALL

Members Present:
Sen. Bruce D. Crippen, Chairman (R)
Sen. Al Bishop, Vice Chairman (R)
Sen. Larry L. Baer (R)
Sen. Sharon Estrada (R)
Sen. Lorents Grosfield (R)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Mike Halligan (D)
Sen. Linda J. Nelson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Valencia Lane, Legislative Council
Judy Keintz, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing: SB 212, SJR 7
Executive Action: HB 83, SB 292, SB 211, SB 318

EXECUTIVE ACTION ON HB 83

Motion: **SENATOR HALLIGAN MOVED HB 83 BE NOT CONCURRED IN.**

Discussion: **CHAIRMAN CRIPPEN.** In reading all of this language it seemed to him the opponents concern themselves with the educational aspect. The other area where he thought an amendment would be helpful is in the area of fine arts. There are quite a number of objections to this from individuals who are anti-pornographic but have a concern about how they would consider fine arts. They had a problem with the standard that was in the bill itself as it would apply to fine arts. To him

committee with a do pass recommendation, then your records will be reflective of the majority of this committee. However, if this bill should pass through with a recommendation of do pass as amended, then the record also will show that it was the majority of the committee, not withstanding your objections, that the legislative intent and purposes and findings are correct in their statements as amended. This bill will come before us on the floor and there will be ample time to discuss it at that time. He appreciated the tenor of the debate on this committee. It's a critical and emotional bill.

Vote: The motion **CARRIED** on roll call vote with **SENATORS BARTLETT, BISHOP, DOHERTY, HALLIGAN,** and **NELSON** voting **"NO".**

EXECUTIVE ACTION ON SB 211

Motion: **SENATOR DOHERTY MOVED TO AMEND SB 211.**

Discussion: **SENATOR DOHERTY** presented the amendments, **EXHIBIT 4.** He talked to County Attorney Paxinos about the bill and they decided to use existing statute. They struck everything after line 1. They went back to existing statute and added biking into the recreational purposes. The City of Billings was concerned about bike paths. They then went to the current statute on restrictions on liability of landowners or his agent or tenant and they added the property that this exemption would apply to would be including property owned or leased by a public entity to make sure that was clear. The next amendment was requested by the Department of Administration, Tort Claims. They were concerned about the $5 and the $10 fee for access to state land as taking the state outside of that no-consideration issue. That would also refer to the next amendment which is the last sentence at the end of (1). They then took the definitions which were in the bill that was presented referring to "'Owner' means a person or entity of any nature, whether private, governmental, or quasi-governmental". In (3) they included "'Property' means land, roads, water, watercourses and private ways. The term includes any improvements, buildings, structures, machinery and equipment on the property." **Dennis Paxinos** has looked at and agrees with this amendments. He made a suggestion for a further clarifying amendment which would be in 302(1), striking the language after who, "makes recreational use of any property" and inserting "uses property for recreational purposes." It would read, "A person who uses property for recreational purposes including property owned or leased by a public entity with or without permission does so without any assurance from the landowner." This covers the bike path area. It satisfies Billings.

SENATOR GROSFIELD stated the issue he was concerned with had to do with a fee. In a state park, who pays the fee? Is the driver paying the fee or can the fee be attributed to everyone in the vehicle? If it's only attributed to the driver, the liability situation for the driver may be different from the

liability situation of the other people in the car, especially the children, and it seems that it would be fair if everyone was in the same boat.

Valencia Lane commented that the way the bill was originally drafted it would have granted immunity even to people who charge for coming onto their land, which was a change from the current law. This goes back to the current law. The person who uses the property does so without assurance that it's safe, if the person does not give valuable consideration directly to the landowner to use the property.

SENATOR BARTLETT questioned how this related to state parks.

Valencia Lane stated that would not be covered by this statute. This statute, which is existing law that we are amending, grants immunity to landowners who allow people to come onto their property without a charge. If the state establishes a park and charges a fee to use that park they don't fall under the protection of this immunity in this statute. This amendment, at the end of (1), does say that valuable consideration does not include the $5 license fee charged by the Department of State Lands so that wouldn't keep them out of the statute.

SENATOR BARTLETT asked if a park fee would.

Valencia Lane stated it would.

CHAIRMAN CRIPPEN asked if there are any instances where the city or county charges a fee for recreational use of a park?

Commissioner Bill Kennedy, Yellowstone County, commented that the City of Billings charges for domes with picnic benches underneath them. The $15 or the $20 charge is only for the use of that shelter. It is not for the use of anything else. If you do not pay that $20 fee and it's open, you can use it. The people are paying the $20 to have it set aside. Other than that, on the city or county parks, there is no fee charged. The state parks in the county charge for camping fees.

CHAIRMAN CRIPPEN commented that the judge that is responsible for bringing this up here, made a ruling inappropriately under the present law. Maybe he did it on purpose to have it clarified.

SENATOR HALLIGAN stated that they have to make sure that the fee is for the shelter only and not for the recreational activity so that they fall under the provisions of this bill.

CHAIRMAN CRIPPEN clarified that it then would also be in the record that the intent of this committee would be that that type of a fee is not a charge for the use of the land unless so designated by the governmental entity.

Vote: The motion to amend **CARRIED** on oral vote with **SENATORS BAER** and **HOLDEN** voting **"NO".**

Motion: **SENATOR DOHERTY MOVED SB 211 DO PASS AS AMENDED.** The motion **CARRIED UNANIMOUSLY** on oral vote.

EXECUTIVE ACTION ON SB 318

Valencia Lane commented that there was concern that the bill as drafted in some instances could actually be a one year statute of limitations and the testimony from the proponents was that that was not what they intended. They meant that one year to catch the tail so there would be a three year statute of limitation unless the activity was discovered after that three years had run and then they should have a one year statute of limitation. The amendment was drafted using the current statute of limitations for attorney's legal malpractice action. There is a three year statute of limitations as provided in the bill. If the act, omission or negligence is discovered after three years, there is still a one-year statute of limitations in which to bring a suit but in no case more than ten years after the action occurred.

Motion/Vote: **SENATOR BISHOP MOVED TO AMEND SB 318.** The motion **CARRIED UNANIMOUSLY** on oral vote.

Discussion: **SENATOR HALLIGAN** commented that the testimony at the hearing indicated the bill was focused on the financial statements. He questioned if this was designed for financial statements or any errors or omissions policy.

Tom Harrison, CPA Association, stated that it was subject to the broad brush which **SENATOR HALLIGAN** just indicated. He views it as encompassing.

SENATOR DOHERTY commented that this bill sets up a complicated system of determining the statute of limitations for an action against an accountant. The current statute of limitations on contracts is eight years. For clarity, all the committee needs to do is use the current statute of limitations on actions against attorneys for legal malpractice, which is three years from date of discovery or when a reasonable person should have discovered and in no case longer than ten years, and add in accountants. He commented that Former Republican Senator Gene Thayer had a very complicated business in which an accountant made serious errors. He and his partner believed they had a lot of money when in fact they had none. They obligated the corporation in many areas. Several years later they found the errors. Senator Thayer sued the accountant who was found negligent. The accountant appealed to the Supreme Court and one of the issues was statute of limitations. Setting up various statutes of limitations will create many more lawsuits.

SENATOR JABS asked how this is handled now.

MONTANA SENATE
1995 LEGISLATURE
JUDICIARY COMMITTEE

ROLL CALL DATE 2/14/95

NAME	PRESENT	ABSENT	EXCUSED
BRUCE CRIPPEN, CHAIRMAN	✓		
LARRY BAER	✓		
SUE BARTLETT	✓		
AL BISHOP, VICE CHAIRMAN	✓		
STEVE DOHERTY	✓		
SHARON ESTRADA	✓		
LORENTS GROSFIELD	✓		
MIKE HALLIGAN	✓		
RIC HOLDEN	✓		
REINY JABS	✓		
LINDA NELSON	✓		

SEN:1995
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SENATE STANDING COMMITTEE REPORT

MR. PRESIDENT:
We, your committee on Judiciary having had under consideration SB 211 (first reading copy -- white), ~~re~~spectfully report that SB 211 be amended as follows and as so amended do pass.

Signed: _____
Senator Bruce Crippen, Chair

That such amendments read:

1. Title, line 5.
Following: ""AN ACT"
Strike: "LIMITING"
Insert: "REVISING THE LAWS RELATING TO"

2. Title, lines 6 and 7.
Following: "PROPERTY;" on line 6
Strike: remainder of line 6 through "IMMUNITY;" on line 7
Insert: "AND"

3. Title, line 7.
Following: "AMENDING"
Strike: remainder of line 7

4. Page 1, line 12 through page 5, line 7.
Strike: everything following the enacting clause
Insert: "**Section 1.** Section 70-16-301, MCA, is amended to read:
"**70-16-301. Recreational purposes defined.** "Recreational purposes", as used in this part, includes hunting, fishing, swimming, boating, water skiing, camping, picnicking, pleasure driving, biking, winter sports, hiking, touring or viewing cultural and historical sites and monuments, spelunking, or other pleasure expeditions."

Section 2. Section 70-16-302, MCA, is amended to read:
"**70-16-302. Restriction on liability of landowner ~~or his agent or tenant~~.** (1) A person who ~~makes recreational use of any property in the possession or under the control of another~~ uses property, including property owned or leased by a public entity, for recreational purposes, with or without permission ~~and without giving a valuable consideration therefor~~, does so without any assurance from the landowner~~, his agent, or his tenant~~ that the property is safe for any purpose if the person does not give a valuable consideration directly to the landowner in exchange for the recreational use of the property. The landowner~~, his agent, or his tenant~~ owes the person no duty of care with respect to the

Amd. Coord.
Sec. of Senate

condition of the property, except that the landowner~~, his agent, or his tenant~~ is liable to ~~such~~ the person for any injury to person or property for an act or omission that constitutes willful or wanton misconduct. For purposes of this section, valuable consideration does not include the state land recreational use license fee imposed under 77-1-802.

(2) As used in this part, "landowner" means a person or entity of any nature, whether private, governmental, or quasi-governmental, and includes the landowner's agent, tenant, lessee, occupant, grantee of conservation easement, water users' association, irrigation district, drainage district, and persons or entities in control of the property or with an agreement to use or occupy property.

(3) As used in this part, "property" means land, roads, water, watercourses, and private ways. The term includes any improvements, buildings, structures, machinery, and equipment on property.

~~(2)~~(4) The department of fish, wildlife, and parks, when operating under an agreement with a landowner or tenant to provide recreational snowmobiling opportunities, including but not limited to a snowmobile area, subject to the provisions of subsection (1), on the landowner's property and when not also acting as a snowmobile area operator on the property, does not extend any assurance that ~~such~~ the property is safe for any purpose, and the department, the landowner, or the landowner's tenant may not be liable to any person for any injury to person or property resulting from any act or omission of the department unless ~~such~~ the act or omission constitutes willful or wanton misconduct.""

-END-

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN BOB CLARK**, on March 3, 1995, at 8:00 AM.

ROLL CALL

Members Present:

Rep. Robert C. Clark, Chairman (R)
Rep. Shiell Anderson, Vice Chairman (Majority) (R)
Rep. Diana E. Wyatt, Vice Chairman (Minority) (D)
Rep. Chris Ahner (R)
Rep. Ellen Bergman (R)
Rep. William E. Boharski (R)
Rep. Bill Carey (D)
Rep. Aubyn A. Curtiss (R)
Rep. Duane Grimes (R)
Rep. Joan Hurdle (D)
Rep. Deb Kottel (D)
Rep. Linda McCulloch (D)
Rep. Daniel W. McGee (R)
Rep. Brad Molnar (R)
Rep. Debbie Shea (D)
Rep. Liz Smith (R)
Rep. Loren L. Soft (R)
Rep. Bill Tash (R)
Rep. Cliff Trexler (R)

Members Excused: NONE

Members Absent: NONE

Staff Present: John MacMaster, Legislative Council
Joanne Gunderson, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: SB 192, SB 211, SB 212, SB 286
Executive Action: NONE

Attorney General Mazurek said he is the training coordinator for all the county attorneys, but he is also the state's special prosecutor. The title was decided by the legislature some years ago.

Closing by Sponsor:

SEN. VAN VALKENBURG made his closing remarks in summary of the need for the passage of the bill and the crucial importance of the position.

HEARING ON SB 211

Opening Statement by Sponsor:

SEN. THOMAS KEATING, SD 5, opened by saying that SB 211 dealt with recreational use of property and exemption from liability of the owner if there is no fee charged for the use of the property. The reason for the bill was that there had been a conflict in the interpretation of the language of the law. This bill was designed to clarify that language. It also was intended to clarify that cities, counties, quasi-municipal organizations, irrigation/conservation districts are included in the exemption.

{Tape: 2; Side: B; Approx. Counter: 16.4}

Proponents' Testimony:

Dennis Paxinos, Yellowstone County Attorney, said this was a nonpartisan issue. He said that this statute has been on the books for many years and it has been interpreted by federal courts which found that parks and corporations were not liable for injuries which had occurred on the recreational-use lands. Although they could be sued for willful and wanton misconduct, they cannot be sued for some negligent acts such as icy sidewalks or chuckholes in bike paths, as long as the land is donated and there are no charges for its use.

Charles Brooks, Yellowstone County Board of County Commissioners, Billings area Chamber of Commerce, said this is a state-wide bill. They are finding recreational facilities shrinking because of the liability factors involved. He submitted an editorial from a local newspaper for the committee's information.
EXHIBIT 17

Stan Kaleczyc, Montana Municipal Insurance Authority (MMIA), said the availability of recreational properties is a growing concern for the MMIA and the cities and towns. In addition, there are more novel offers, but the courts in the state are reluctant to recognize that the local governments have the same immunity as private property owners when land is made available at no charge for recreational purposes. The bill would resolve that problem.

John Shontz, Montana Association of Realtors, said this bill would impact private property owners and the increasing pressure for private property to be opened for recreational use in Montana.

Jim Kembel, City of Billings, asked for support of SB 211.

Bob Frazier, University of Montana Campuses, said this was a very important issue to Missoula. He cited areas it would positively affect.

REP. JOAN HURDLE, HD 13, rose in support of the bill.

Opponents' Testimony:

Russell Hill, Montana Trial Lawyers Association (MTLA), stood in conditional opposition to SB 211 and presented written testimony. He was not challenging the intent of the proponents to clarify their contention that in current Montana law governmental land owners enjoy the same protections under the existing recreational immunity statute as private owners. He outlined proposed amendments. **EXHIBIT 18**

{Tape: 2; Side: B; Approx. Counter: 45.7}

Questions From Committee Members and Responses:

REP. MC GEE referred to lines 26 and 27 of page 1 and understood that if valuable consideration had been given for the use of the property, they could be held liable. Then on the top of page 2, which referred to the $5 fee to enter state lands for the specific purpose of recreation, there was a provision for exemption from liability. It seemed contradictory.

SEN. KEATING said that was true that the $5 fee charged by the state for recreational use was specifically exempt under the language of this statute.

REP. MC GEE asked if that meant if someone were injured while using state lands for recreation, they would have yielded their right of recourse against the state through the $5 fee.

SEN. KEATING responded, "Not if the injury occurred because of willful misconduct. If the state knowingly left a hazard upon which the person was hurt, they would not be exempt from liability."

REP. MC GEE asked if they would have to prove, "knowingly."

SEN. KEATING answered that they would have to show that the state knew that that hazard was there.

REP. LIZ SMITH asked if this bill would affect the donation or unsupervised collection boxes for fees.

SEN. KEATING said that the word, "directly," would apply. A contribution is not a direct payment for recreational use. He cited the example of hunters leaving a portion of the animal on the doorstep of the farmer who allowed them the use of the land. That is not a charge by the farmer, but it is a gift or contribution, an expression of a thank you for the land use.

He said an example had to do with snowmobilers in obtaining trails must cross fee property. The fish, wildlife and parks department leases private property from individuals who receive a consideration for that lease arrangement. The owner is actually being compensated for the use of that land. That landowner is exempt because he is not receiving direct payment from the snowmobiler who recreates there.

REP. SMITH discussed hunting access examples where a private landowner receives a $25 fee.

SEN. KEATING said they would not be exempt from liability. He said there was a companion bill dealing with recreational use of agricultural land.

REP. KOTTEL asked if this bill distinguished between artificial leasing occurring conditions and naturally occurring conditions.

Mr. Hill said the major improvement which was made in the bill in the Senate was instead of completely deleting Montana's recreational-use statute and adding in new language, this decision was to amend current law. If the bill passed, he believed the first trial lawyer to become involved would say that Montana's recreational law wasn't designed for buildings or malls. The bill itself does not make that distinction between any kind of property.

REP. KOTTEL said that to her an attractive nuisance was an artificially occurring condition on a piece of property that is a danger to an infant who doesn't appreciate the risk involved. It would involve a minor cost to correct the problem and would cause serious danger to the child. She asked if they would no longer be able to bring an attractive nuisance lawsuit on recreational property.

Mr. Hill said in his opinion that was a real danger because nearly everything a child does is a recreational use. He was not sure he agreed that an attractive nuisance doctrine has to be artificially created.

REP. KOTTEL asked if in the case of someone putting up a swing set near a mine shaft on their property and a child died as a result of falling into the mine shaft, would there be no redress even though it was an artificial condition.

Mr. Hill said the only possible redress would be to argue that it was willful or wanton misconduct.

REP. KOTTEL asked where willful and wanton begins and stops in terms of simple negligence.

Mr. Hill said that willful is basically criminal, it is intended. Wanton is so grossly negligent that it is just as if it were intended. For example, if a person drove 30 miles an hour in a 15-mile-an-hour school zone, that is not wanton misconduct; but if a person drove 120 miles an hour, it would be wanton misconduct. It is flagrant disregard for the safety of others.

REP. SHIELL ANDERSON asked if **Mr. Hill** was aware of exculpatory causes and whether those had been holding up in lease hunting situations.

Mr. Hill answered that in terms of leasing out private property for hunting to private parties, he did not know the answer. He said he understood that HB 195 would address it. MTLA stood in support of that bill because it would grant immunity.

REP. SOFT asked **Mr. Paxinos** for his position on the amendments suggested by MTLA.

Mr. Paxinos spoke to the amendments.

{Tape: 3; Side: A}

REP. SOFT said he was not sure whether **Mr. Paxinos** was in agreement with the amendments.

Mr. Paxinos said he did not have a black and white answer though he could find an exception to every one of the amendments.

REP. SOFT asked if he was generally saying he did not support the amendments.

Mr. Paxinos said he guessed he was not supporting the amendments.

Closing by Sponsor:

SEN. KEATING said the proposed amendments might cause more problems than they would solve because they would restrict the intent of the bill. He felt this bill would do the most good for the most people.

Motion: **REP. ANDERSON MOVED TO ADJOURN.**

{Comments: This set of minutes is complete on three 60-minute tapes.}

HOUSE OF REPRESENTATIVES

Judiciary

ROLL CALL DATE 3/3/95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bob Clark, Chairman	✓		
Rep. Shiell Anderson, Vice Chair, Majority	✓ 9:30	~~✓~~	
Rep. Diana Wyatt, Vice Chairman, Minority	✓		
Rep. Chris Ahner	✓		
Rep. Ellen Bergman	✓		
Rep. Bill Boharski	✓		
Rep. Bill Carey	✓		
Rep. Aubyn Curtiss	✓		
Rep. Duane Grimes	✓	9:20 ~~✓~~	
Rep. Joan Hurdle	✓		
Rep. Deb Kottel	✓		
Rep. Linda McCulloch	✓		
Rep. Daniel McGee	✓		
Rep. Brad Molnar	✓		
Rep. Debbie Shea	✓		
Rep. Liz Smith	✓	9:25 ~~✓~~	
Rep. Loren Soft	✓		
Rep. Bill Tash	✓		
Rep. Cliff Trexler	✓		

Proposal key to BikeNet

Call the Legislature and expresss your support of Senate Bill-211

2/1/95

LITIGATION IS TYING this nation in knots.

Propose a recreational project, public or private, and watch the fear grow. Finally, comes the question: "What's the liability?" The question is well warranted. People are too quick to drop their own irresponsibility into the nearest deep pocket.

So recreational opportunities are, for good reason, shrinking. But now there is a bill before the Legislature that offers hope.

The purpose of Senate Bill 211 is "to encourage owners of public and private property to make the property available to the public for recreational purposes by limiting the owner's liability toward persons entering upon the property and toward persons who may be injured or otherwise damaged by the acts or omissions of persons who enter upon the property."

This bill is long overdue. It suggests that if a hunter asks to hunt on private land and then shoots himself in the foot, the responsibility for his carelessness stays on his shoulders where it belongs.

This does not force landowners to open their land. It only allows protection to those amenable to open their land. It applies only to those lands for which there is no commercial charge.

Billings and Yellowstone County are working to build BikeNet, a series of pedestrian and bicycle paths around Billings that will offer our children safe passage, that will offer Billings families golden days in the sun. Passage of SB-211 is a key to that dream.

So call 1-406-444-4800 and leave a message for your senator. Urge him or her to vote for the bill. Do your part to help open doors in Montana to a better world.

Billings Gazette Feb 01-1995

P.1/1

They caused difficulties for working parents. And they weren't much fun for the teachers and their families, either.

But I don't recall any president of the United States saying that he could not stand by while children were being deprived of their book learning and households were being disrupted.

These strikes were a local governmental labor dispute — none of the federal government's business — and they were settled by local officials and unions.

Although unions have declined in strength and membership, strikes are not a novelty. And when they happen, somebody inevitably suffers. The workers and their families don't have paychecks. The business being struck might take a painful hit to its profits.

And there is always a ripple effect to a strike. The striking workers have less money to spend with local merchants. Suppliers of the company that is struck lose business.

But unless it creates a national emergency — and few strikes do — the president of the United States doesn't an-

EXHIBIT 17
DATE 3/3/95
SB 211

failing to notice that we were ex
ing a national emergency.

Although I'm a baseball fan,
aware that my loved ones or I w
in any grave danger if we coul
Sammy Sosa flail at a high inside

It was a lot more worrisom
the Chicago firemen walked ou
discovered that my garden hose
eral leaks.

When the teachers go on st
sce frazzled mothers on TV. Ap
their suffering isn't as severe as
some grinning patron of a sports

I'm sure that the baseball

■ A FUNDAMENTAL DEBATE

Government revi

Time is perfect to correct this nation's course

COMMENTARY

David Broder

National columnist

WASHINGTON IS experiencing a "back-to-the-basics" movement that can carry great benefits for the country — if it is sustained at the level of seriousness it requires. Fundamental questions about the Constitution and the role of government are being debated in a way that has not happened in generations.

The House Republicans deserve credit for starting the process with their Contract With America, a dead-aim assault on the assumptions of the welfare state. It has been broadened by the new Republican majority among the nation's governors and now the Senate has been dragged into the fight as well. Some Democrats are beginning to speak up on their side of the argument. While one could wish for a more assertive stance on the part of the president, the ingredients are almost all in place for a good national discussion of these questions.

This is the right time for such a test of ideas to occur. As President Clinton has said, the New Deal, World War II and the Cold War — the defining experiences of the last six decades — are over. The generation of politicians shaped by those events has yielded power to its sons and daughters. A new millennium is only five years away. If we in the news media do our part in communicating the arguments with force and clarity, the people of this country will really have a chance to render their verdict on what kind of nation this will be.

Political

As Gov. Mike Leavitt (R) of Uta
ed out in an interview last week,
have Democratic legislatures,
Republican legislatures and the
der are split. Most of the citi
Democratic mayors; most of th
Republican governors. Congress
publican, but the Democrats h
White House. No single party ca
nate the debate.

Leavitt and Nebraska Gov.
jamin Nelson (D) are organiz
part of the process. It is a Confe
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bipartisan delegations from eac
lature will meet twice this year t
structural proposals for consti
changes aimed at "redressing
ance" between the national gov
and the states.

Anyone who wants to un
why the moment is right need o
the new Chatham House pa
"The Rebirth of Federalism," b
B. Walker of the University of C
cut, a longtime student of inte
mental relations. His summary
forces that have made the natio
ernment dominant in the federa
and that have bred the "ramp
trust" that now pervades all
government tells you why the go
project could not be more timely

fiscal crisis of

FEB 01 '95 10:40 YELL-CO-CENT-SVCS

EXHIBIT 18
DATE 3/3/95
SB 211

Directors:
Wade Dahood
Director Emeritus
[illegible]te D. Beck
Elizabeth A. Best
Michael D. Cok
Mark S. Connell
Michael W. Cotter
Patricia O. Cotter
Karl J. Englund
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March 3, 1995

Rep. Bob Clark, Chair
House Judiciary Committee
Room 312-1, State Capitol
Helena, MT 59620

RE: Senate Bill 211

Mr. Chair, Members of the Committee:

Thank you for this opportunity to express MTLA's opposition to Senate Bill 211, which dramatically alters current Montana law regarding recreational-use immunity.

Background. This bill apparently responds to a preliminary ruling by a Billings judge in a lawsuit which the City of Billings subsequently won. That ruling was never appealed and has no precedential authority. It certainly does not upset current Montana law, which already extends recreational-use immunity to governmental landowners. See, for example, *Fisher v. U.S.*, 534 F.Supp 514 (1982), in which a federal district court applying Montana law ruled that the government, as owner of the Lee Metcalf National Wildlife Refuge, was immunized by Montana's recreational-use statute from liability for a young girl who died on an educational field trip when a raised snowplow blade fell.

With such slim justification, however, SB 211 proposes to overhaul Montana's current recreational-use statute, Sec. 70-16-302, MCA, and seriously complicate well-settled law regarding "landowners" and "property." Where previous Montana Legislatures have enacted laws encouraging landowners to make natural, undeveloped land accessible to Montanans for recreation without charge, the proponents of SB 211 are asking this Legislature to enact a law which grants immunity to landowners ***regardless of the character of the property, and regardless of the public's right already to access the property.*** In doing so, the bill also severely disables Montana's long-held "attractive nuisance" doctrine which protects small children from attractive dangers.

Senate Bill 211. This bill uses incredibly broad and imprecise language to exempt federal and state governments, commercial enterprises, and urban property owners from

accountability for their carelessness:

- The expansive definition of a property "owner" (page 2, lines 2-5) now genuinely includes "a person or entity of any nature": not just private citizens or governments which actually own land, but also tenants, occupants, lessees, and anyone else in control of property or using property. ***In fact, many so-called recreationists prejudiced by SB 211 will actually be owners injured by the carelessness of someone else "in control of" their property.***

- The expansive definition of "property" (page 2, lines 6-7) no longer includes just natural, undeveloped land which an owner cannot reasonably maintain in a safe condition for recreationists. The definition of "property" now includes governmental and business property which is extensively developed and requires constant maintenance: ***highways, shopping centers, amusement parks, movie theaters, sports stadiums, health clubs, racetracks, indeed everything "on" land.*** Regardless of the limited intent of proponents, SB 211 extends immunity to vast new circumstances involving "recreational purposes."

- The existing definition of "recreational purposes" (page 1, lines 16-19) clearly contemplates only outdoor activities in primarily natural settings. But by expanding the scope of "landowner" and "property" so dramatically, SB 211 threatens the current interpretation of such terms in this section as "pleasure driving," "touring or viewing cultural and historical sites and monuments," and "other pleasure expeditions." To help prevent SB 211 from mutating far beyond its proponents intentions--from reaching such "recreational purposes" as pleasure driving on Montana's scenic highways; visiting Montana's historic towns and cultural centers; even shopping expeditions--MTLA urges the committee to clarify that Sec. 70-16-301, MCA, refers to <u>outdoor</u> activities and does <u>not</u> include such everyday activities as driving, shopping, attending movies or sports events, etc.

- The new language regarding "direct" payment for access to property (page 1, lines 26-27) ignores the many situations in which so-called recreational users have paid for access "indirectly"--for example, when they accompany other users who <u>did</u> pay, or when they pay one so-called "landowner" but not another. MTLA urges this committee to delete the word "directly" on page 1, line 27 of the bill.

Again, thank you for this opportunity to express MTLA's concerns about SB 211. If I can provide more information or assistance to the Committee, please notify me.

Respectfully,

Russell B. Hill, Executive Director

Amendments to Senate Bill No. 211
Third Reading Copy (Blue Copy)

Requested by the Montana Trial Lawyers Association
For the House Judiciary Committee

Prepared by Russell B. Hill
March 3, 1995

1. Page 1, line 18.
Following: "other"
Insert: "outdoor"

Reason for the amendment: This amendment clarifies the intent of the bill and its proponents, consistent with current law, that recreational purposes consist of outdoor activities and do not include indoor activities at developed facilities which require extensive maintenance.

2. Page 2, line 19.
Following: "purposes."
Insert: " "Recreational purposes," as used in this part, does not include pleasure drives on public streets and highways; casual shopping in public stores; attendance at movie theaters, athletic events, or health clubs; or any similar activity."

Reason for the amendment: This amendment, or any substantially similar amendment preferred by this committee, will clarify the expressed intent of the bill and its proponents that the term "recreational purposes" does not include every activity on land which might be primarily for pleasure.

3. Page 1, line 27.
Strike: "directly"

Reason for the amendment: This amendment will protect the intent of the bill and its proponents to address genuinely gratuitous access without artificially excluding situations in which a recreationist gains access by virtue of payments from someone else (for example, as a non-paying guest of someone who does pay) or by virtue of payments to one so-called "landowner" but not another.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN BOB CLARK**, on March 9, 1995, at 8:00 AM.

ROLL CALL

Members Present:

Rep. Robert C. Clark, Chairman (R)
Rep. Shiell Anderson, Vice Chairman (Majority) (R)
Rep. Diana E. Wyatt, Vice Chairman (Minority) (D)
Rep. Chris Ahner (R)
Rep. Ellen Bergman (R)
Rep. Bill Carey (D)
Rep. Aubyn A. Curtiss (R)
Rep. Duane Grimes (R)
Rep. Joan Hurdle (D)
Rep. Deb Kottel (D)
Rep. Linda McCulloch (D)
Rep. Daniel W. McGee (R)
Rep. Brad Molnar (R)
Rep. Debbie Shea (D)
Rep. Liz Smith (R)
Rep. Loren L. Soft (R)
Rep. Bill Tash (R)
Rep. Cliff Trexler (R)

Members Excused: Rep. William Boharski

Members Absent: None

Staff Present: John MacMaster, Legislative Council
Joanne Gunderson, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing:	SB 175, SB 372	
Executive Action:	SB 286	BE CONCURRED IN
	SB 211	BE CONCURRED IN AS AMENDED
	SB 278	BE CONCURRED IN
	HB 517	DO PASS AS AMENDED
	SB 175	TABLE
	SB 372	POSTPONE ACTION

Discussion: **REP. MC GEE** asked **REP. GRIMES** to confirm that the pay and benefits would exceed those figures presented in testimony.

{Tape: 2; Side: B}

They continued to discuss the applicability and reasonable fiscal impact from the proposed provision. **REP. CAREY** also referred to testimony and written documents to substantiate the figures proposed in testimony.

Motion: **REP. KOTTEL MOVED TO AMEND LINE 13 FOLLOWING "IN A CIVIL ACTION" INSERT "IN WHICH THE STATE OR ONE OF ITS AGENCIES IS NOT A PARTY."**

Discussion: **REP. TREXLER** asked if this meant that if the suit involved one party but they wanted information from a different department from the one being sued that those expenses would not be paid either.

REP. KOTTEL said that was how the amendment was written.

VICE CHAIR WYATT read a request from **REP. CHRIS AHNER** that the committee not take action on the bill until she had time to obtain information. **REP. GRIMES** suggested moving the amendment and then to suspend further action.

Vote: **The amendment motion carried unanimously.**

Motion/Vote: **REP. GRIMES MOVED TO POSTPONE FURTHER ACTION ON SB 372. The motion carried unanimously.**

Motion: **REP. SOFT MOVED TO ADJOURN.** The motion was set aside as **CHAIRMAN CLARK** returned and resumed the chair.

EXECUTIVE ACTION ON SB 211

Motion: **REP. SMITH MOVED SB 211 NOT BE CONCURRED IN.**

Discussion: **REP. SMITH** said her reasons for the motion was that the bill was ambiguous. She felt the amendments added to the confusion in the language relating to recreational purposes on page 1, line 19.

REP. KOTTEL attempted to clear up the confusion relating to the issue of allowing the state to immunize itself from pleasure drives on public streets and said that proposed amendment 2 submitted by **Mr. Hill** would clarify that pleasure drives on public streets were excluded. The other issue related to the third proposed amendment which responded to the testimony that without the word, "directly," it would have the effect that if the child was not the one paying the entry fee but was the one subsequently injured in a for-profit area, the business could

claim immunity. Therefore, the amendment proposed to strike "directly" to clarify that immunity would apply where no compensation was forthcoming.

Motion: **REP. KOTTEL MOVED THE ABOVE-MENTIONED AMENDMENTS.**

CHAIRMAN CLARK told the committee that in order to entertain amendments, there would have to be a substitute motion to concur.

Motion: **REP. SMITH MOVED A SUBSTITUTE MOTION THAT SB 211 BE CONCURRED IN.**

Discussion: **REP. HURDLE** said she supported the amendments.

REP. GRIMES asked what any similar activity in the second amendment could refer to and if pleasure drives on public streets could actually be recreational. He wondered if it would include back trails or casual shopping. He was worried about the full implication of those words in court.

REP. KOTTEL clarified where those words were inserted. She said the result was that immunity would be offered to a landowner upon whose property someone took their four-wheeler for a pleasure drive.

REP. TASH opposed the amendment because there were already too many things which happen between the public and private landowners to invoke more restrictions and not to offer more immunization from liability in those cases would deny more access to public and private lands.

REP. KOTTEL agreed with him and that was why she supported the bill because the fear of lawsuit had stopped many from promoting recreational events. She explained her support of the amendments.

{Tape: 2; Side: B; Approx. Counter: 23.2}

REP. TASH responded and continued to describe his opposition to the amendments.

REP. MOLNAR suggested segregation of the amendments.

CHAIRMAN CLARK informed the committee that they were dealing with amendment 2 as segregated from amendment 3.

REP. KOTTEL felt that when people voluntarily give up private lands for recreational use they should be protected. But she felt that when they engaged in a for-profit venue, their way of risk management was to operate that operation appropriately. She felt that persons entering the for-profit entity were due the responsibility of the owner to provide safety. She felt the amendment clarified that.

REP. ANDERSON said this amendment was unnecessary in his opinion because not everyone is on the public streets and highways for pleasure purposes and there are standards which must be maintained to keep them for the activities. He said that the buildings and businesses were already being kept safe because they would already be held liable for those who would be paying to use them.

Vote: **The motion (on amendment 2) failed on voice vote.**

Discussion: **REP. KOTTEL** discussed the reason for amendment 3 and said it did affect the intent of the bill which was to protect those who granted genuine gratuitous access. In striking the word, "directly," she said they would see defense tactics where they would have a position of artificially excluding situations because game is left on a door step or someone else paying an entrance fee for a child, for example. She felt the amendment was a clean-up measure and would allow the bill to accomplish its intent.

REP. ANDERSON again thought they were knit-picking the bill and thought it should be left as proposed.

REP. MC CULLOCH said if it was not a big deal, it wouldn't hurt to include the amendment.

REP. MC GEE said he would vote for the amendment.

Vote: **The motion carried 9 - 7 by roll call vote.**

Motion: **REP. SMITH MOVED SB 211 BE CONCURRED IN AS AMENDED.**

Discussion: **REP. SMITH** asked what other valuable consideration to the landowner applied.

REP. ANDERSON said there had to be a separation between gift and consideration. Consideration given was for the purpose of accessing the property without which they would not be able to access it. It could be something given in exchange for the services and it most likely would be money.

REP. TASH encouraged the committee to vote for the bill with the amendment. He said they were trying to encourage some of the partnerships and they weren't just talking about outdoor recreation. Some of those bike paths, etc. were on state-owned land and that was all the more reason for providing some immunization from liability for someone who might step in a badger hole and sue the state for it. He said there was some payment by reciprocation for community interests.

REP. MC GEE made the point that the text beginning on line 22 on page 1, made the state a unique landowner by finding it immune from liability while having to pay the state for use of the land.

REP. CAREY asked if current Montana law extended recreational use immunity to governmental landowners.

Mr. MacMaster thought it did. He said whether or not the bill passed, they were immune.

REP. MC CULLOCH said that her notes indicated that charging a fee waived the right to sue unless there was willful and wanton misconduct.

REP. TASH affirmed what **REP. MC CULLOCH** had said and he felt the language was pretty specific. In regard to the fees, he discussed examples of the application of 77-1-802, MCA.

Motion: REP. KOTTEL MOVED TO AMEND PAGE 1, LINE 18 TO INSERT "OUTDOOR" AFTER "OTHER."

Discussion: CHAIRMAN CLARK resisted the amendment because it was not always clear who was liable on some indoor activities.

REP. ANDERSON agreed to the opposition of the amendment and he talked about recreation on private lands which included old buildings where limiting it to outdoor situations would preclude immunity from liability where it should not be.

REP. KOTTEL said she had no problem immunizing property owners from naturally occurring conditions but did have a problem when a landowner created an artificial condition and the structure would be subject to extensive maintenance to make it worthy of having people inside it. She did not think people who provided those structures should be kept immune from maintaining a standard of safety.

CHAIRMAN CLARK and **REP. KOTTEL** continued to debate the point.

{Tape: 2; Side: B; Approx. Counter: 58.6}

REP. ANDERSON described why he disagreed with **REP. KOTTEL'S** philosophy on this point.

Vote: The motion failed by voice vote. (Five members voted aye.)

Vote: The motion on the bill as amended carried 15 - 1, REP. WYATT voted no.

Motion: REP. CAREY MOVED TO ADJOURN.

{Comments: This set of minutes is complete on two 60-minute tapes.}

HOUSE OF REPRESENTATIVES

Judiciary

ROLL CALL DATE 3/9/95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bob Clark, Chairman	✓		
Rep. Shiell Anderson, Vice Chair, Majority	✓		
Rep. Diana Wyatt, Vice Chairman, Minority	✓		
Rep. Chris Ahner	✓		
Rep. Ellen Bergman	✓		
Rep. Bill Boharski	✓		✓
Rep. Bill Carey	✓		
Rep. Aubyn Curtiss	✓		
Rep. Duane Grimes	✓		
Rep. Joan Hurdle	✓		
Rep. Deb Kottel	✓		
Rep. Linda McCulloch	✓		
Rep. Daniel McGee	✓		
Rep. Brad Molnar	✓ 9:15	✓	
Rep. Debbie Shea	✓		
Rep. Liz Smith	✓ 9:15	✓	
Rep. Loren Soft	✓		
Rep. Bill Tash	✓		
Rep. Cliff Trexler	✓		

HOUSE STANDING COMMITTEE REPORT

March 9, 1995

Mr. Speaker: We, the committee on **Judiciary** report that **Senate Bill 211** (third reading copy -- blue) **be concurred in as amended.**

Signed: Bob Clark

Bob Clark, Chair

Carried by: Rep. Mills

And, that such amendments read:

1. Page 1, line 27.
Strike: "directly"

-END-

Committee Vote:
Yes 15, No 1.

551411SC.Hbk

3/9

HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

Judiciary Committee

DATE 3/9/95 BILL NO. SB211 NUMBER _____

MOTION: Amendment #3 suggested by Russell Hill, MT.

NAME	AYE	NO
Rep. Bob Clark, Chairman		✓
Rep. Shiell Anderson, Vice Chairman, Majority		✓
Rep. Diana Wyatt, Vice Chairman, Minority	✓	
Rep. Chris Ahner		
Rep. Ellen Bergman		
Rep. Bill Boharski		
Rep. Bill Carey	✓	
Rep. Aubyn Curtiss		✓
Rep. Duane Grimes	✓	
Rep. Joan Hurdle		✓
Rep. Deb Kottel	✓	
Rep. Linda McCulloch	✓	
Rep. Daniel McGee	✓	
Rep. Brad Molnar	✓	
Rep. Debbie Shea	✓	
Rep. Liz Smith		✓
Rep. Loren Soft		✓
Rep. Bill Tash		✓
Rep. Cliff Trexler	✓	